

EDO Principal Correspondence Control

FROM: DUE: 11/04/08

EDO CONTROL: G20080725
DOC DT: 10/23/08
FINAL REPLY:

Representative Edward Markey

TO:

Chairman Klein

FOR SIGNATURE OF :

** PRI **

CRC NO: 08-0559

Chairman Klein

DESC:

Opportunity to Provide Comments on Agency Documents (EDATS: SECY-2008-0607)

ROUTING:

Borchardt
Virgilio
Mallett
Ash
Ordaz
Cyr/Burns
Cyr, OGC
Schmidt, OCA

DATE: 10/24/08

ASSIGNED TO:

CONTACT:

EDO	Shoop
ADM	Hagan
NRR	Leeds
NRO	Johnson
NSIR	Zimmerman
RES	Sheron
NMSS	Weber
FSME	Miller

SPECIAL INSTRUCTIONS OR REMARKS:

Ref. G20080686. ADM, NRR, NRO, RES, NMSS and FSME provide input to Undine Shoop, OEDO by November 4, 2008. OEDO to coordinate response to Qs and prepare letter for the signature of the Chairman. Please note that ADAMS Congressional Folder is available when responding to this letter.

Template: SECY-017

E-RIDS: SECY-01

EDATS

Electronic Document and Action Tracking System

EDATS Number: SECY-2008-0607

Source: SECY

General Information

Assigned To: OEDO

OEDO Due Date: 11/12/2008 5:00 PM

Other Assignees: ADM 11/4/2008, NRR 11/4/2008, NRO 11/4/2008, RES 11/4/2008, NMSS 11/4/2008, FSME 11/4/2008

SECY Due Date: NONE

Subject: Opportunity to Provide Comments on Agency Documents

Description:

CC Routing: OGC; OCA

ADAMS Accession Numbers - Incoming: NONE

Response/Package: NONE

Other Information

Cross Reference Number: G20080725, LTR-08-0559

Staff Initiated: NO

Related Task:

Recurring Item: NO

File Routing: EDATS

Agency Lesson Learned: NO

Roadmap Item: NO

Process Information

Action Type: Letter

Priority: Medium

Signature Level: Chairman Klein

Sensitivity: None

Urgency: NO

OEDO Concurrence: YES

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions: Ref. G20080686. ADM, NRR, NRO, RES, NMSS and FSME provide input to Undine Shoop by November 4, 2008. OEDO to coordinate response to Qs and prepare letter for the signature of the Chairman. Please note that ADAMS Congressional Folder is available when responding to this letter.

Document Information

Originator Name: Representative Edward Markey

Date of Incoming: 10/23/2008

Originating Organization: Congress

Document Received by SECY Date: 10/24/2008

Addressee: Chairman Klein

Date Response Requested by Originator: NONE

Incoming Task Received: Letter

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Oct 24, 2008 15:58

PAPER NUMBER: LTR-08-0559 **LOGGING DATE:** 10/24/2008

ACTION OFFICE: EDO

AUTHOR: REP Edward Markey

AFFILIATION: CONG

ADDRESSEE: CHRM Dale Klein

SUBJECT: Concerns Greenpeace's assertion that on two recent occasions NRC has denied members of the public the same opportunity to provide comments to agency document as was provided to members of the nuclear industry

ACTION: Signature of Chairman

DISTRIBUTION: RF, OCA to Ack

LETTER DATE: 10/23/2008

ACKNOWLEDGED No

SPECIAL HANDLING: Commission Correspondence

NOTES:

FILE LOCATION: ADAMS

DATE DUE: 11/17/2008

DATE SIGNED:

EDO --G20080725

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NATURAL RESOURCES

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<http://markey.house.gov>

October 23, 2008

The Honorable Dale E. Klein
Chairman
U.S. Nuclear Regulatory Commission
Washington DC 20555

Dear Chairman Klein:

The NRC's Principles of Good Regulation highlight the importance of Independence, explaining that, "Nothing but the highest possible standards of ethical performance and professionalism should influence regulation." But an October 8, 2008 letter from Jim Riccio, of Greenpeace asserts that on two recent occasions the NRC has denied members of the public the same opportunity to provide comments to agency documents as was provided to members of the nuclear industry. If accurate, this is another in a long line of disappointing incidents that appears to fly in the face of the Nuclear Regulatory Commission's assertions regarding the importance it places upon the openness and transparency of its processes.

Similar incidents raising legitimate questions of the NRC's ability to be an impartial regulator have repeatedly surfaced over the last several years, including assertions that the NRC met with only industry groups on security matters; denied a public-interest group (with the appropriate security clearances) access to security information; and prevented the National Academies of Science from publicly releasing an unclassified version of a Congressionally-mandated study, just to name a few. The Greenpeace letter raises similar serious questions about the NRC's ability to operate as an open and fair regulator, some which is essential for the public to have confidence in its decision-making. Accordingly, I would appreciate the NRC's responses to the following questions.

- NSIR
1. According to the Greenpeace letter (attached), the NRC staff afforded the Nuclear Energy Institute (NEI) an exclusive opportunity to comment on two Regulatory issue Summaries (RIS) concerning Federal Firearms Background Checks and Individuals Under a Federal Firearms Disability (RIS-2008-10 and RIS-2008-10, Supplement 1, respectively). Is this true? If so, who at the NRC authorized the activity and to whom in the industry were the documents provided?

NSIR/ADM

2. Please describe the NRC's regulations or policy for requesting and accepting comments on agency documents. Is the practice or policy detailed in any agency document and if so, please provide a copy(ies). Was the NRC staff action described in the Greenpeace letter consistent with these regulations or policy? If not, what actions has NRC taken to investigate these incidents, hold those responsible accountable, determine whether other similar instances have occurred in the past and prevent future such instances from occurring?

ADM

3. Does the agency always publish documents on which the NRC solicits comment in the Federal Register?

NSIR

4. Did the agency publish the two RISs in question in the Federal Register? If so, please provide date and FRN page number for each. If not, why not?

ADM

5. Please explain how the agency determines when a document should be published in the Federal Register; when a document should be posted on the "Documents for Comment" section of the website; or both? What specific agency procedures are followed when making these decisions?

ADM

6. The agency's Management Directive Volume 3, Part III, "Scheduling and Announcing Meetings", in the section entitled, "Procedures for Noticing Meetings (C)", explains that for public meetings, the agency is to ensure that documents available for public comment are posted on the appropriate "Documents for Comment" page on the NRC's public Web site. Did the agency host public meetings regarding either of these documents, and if so, were the RISs available for comment in the "Documents for Comment" section of the website? If so, please provide the date and location of posting. If not, please explain why the management directive was not followed.

NSIR/NRR/
NRD/RES/
NMSS/FSME

7. Are there any other instances in the last five years of a document being provided for comment solely to a single type of stakeholder? If so, for each instance please list the document by title, to whom it was provided, and the date of the occurrence, and the reason why it was withheld from all other stakeholders. Also, explain in each instance whether the NRC made changes to the documents based upon the comments received, what specific changes were made, and if and where the comments received were made publicly available.

NSIR

8. Does the NRC plan to make changes to the two RIS based upon NEI's lone comments on these documents, or will the NRC now offer other stakeholders the opportunity to comment before finalizing the documents? Did the NRC make NEI's comments on the documents publicly available? If so, how? If the agency has finalized the documents without affording others the opportunity to comment, for each substantive change suggested by NEI and adopted by the NRC, explain the rationale for accepting the comment and making the change.

NSIR/
ADM

9. What steps does the NRC plan to take to ensure that, in the future, if the agency seeks comments on a public document that the invitation is an open invitation to all of the agency's stakeholders rather than a selective invitation to the industry? Does the agency plan to formalize its public participation process in a manner that might prevent future instances of mistakes or miscommunications? If so, when does the agency plan to have such a process in place?

I am concerned that these incidents, and similar incidents which I have written to you about in the past, may reveal a pattern of favoritism and bias towards the nuclear utility lobby by the NRC, and a disdain for allowing full public participation in the agencies' rulemakings. As the NRC itself often recognizes, openness and transparency are a necessary part of a healthy and independent decision-making process. Thus, reports of the agency ignoring those fundamental principles must be taken seriously and addressed immediately. I look forward to your prompt response to my questions. If you have questions about our inquiries, please have a member of your staff contact Will Huntington or Michal Freedhoff of my staff.

Sincerely,


Edward Markey