

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

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ADDRESSEE: CHRM Gregory Jaczko
SUBJECT: Preferential Disclosure of Agency Information to Licensees

ACTION: Signature of Chairman
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VIA E-MAIL AND U.S. MAIL

July 1, 2009

The Honorable Gregory Jaczko
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Preferential Disclosure of Agency Information to Licensees

Dear Chairman Jaczko:

I am writing on behalf of my clients Nuclear Information and Resource Service, Inc. and Beyond Nuclear, Inc., concerning the Staff's decision to exclude all members of the public and a State regulatory body from meetings with licensees regarding potential shortfalls in decommissioning funds. The Staff justified this exclusion by citing to agency policies that allow meetings to be closed when the meetings could result in "the inappropriate release of preliminary, predecisional, or unverified information." E-mail from Pickett to Gunter, dated June 25, 2009. When I telephoned Mr. Pickett to question this statement I was referred to Mr. Sherwin Turk of the Office of General Counsel. Mr. Turk clarified that the information in question is certain provisional calculations that the Staff has performed. However, Mr. Turk was unable to clarify why the Staff believes that release of this information to licensees is appropriate, while release to the public is inappropriate. Mr. Turk further agreed that the deliberative privilege cannot be invoked with regard to information that the Staff shares with licensees.

We believe this is a stark example of the Staff's tendency to give licensees preferential treatment, particularly with regard to release of information, even where public participation would not hinder, and could actually enhance, agency decisionmaking. As we have previously pointed out, the Staff has also excluded the public from inspection exit meetings, even where matters of intense public concern were being discussed. In addition, the Staff strictly limits which documents inspectors may remove from licensee sites, and in one instance even reviewed a safety analysis at Exelon's DC headquarters. We believe that these actions are motivated primarily by the Staff's desire to prevent licensee documents from becoming obtainable by the public under the Freedom of Information Act.

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We cannot understand how these actions are consistent with the Commission's desire for the Staff to conduct agency business in a transparent manner. Nor can the Staff's preferential release of agency information to licensees be squared with the "cardinal rule of fairness" that the Commission has recognized should guide agency procedures, particularly where the released information may relate to contentions that are pending before the agency. We would greatly appreciate any assistance you may be able to offer to guide the Staff appropriately in this area. Thank you for your consideration.

Yours sincerely,

/s

A handwritten signature in black ink, appearing to read "Richard Webster", is written over a thin horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Richard Webster, Esq.