

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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October 28, 2009

The Honorable Gregory B. Jaczko
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko,

Section 401 of the Conference Report to the Energy and Water Development and Related Agencies Appropriations Act for 2010 instructs the Nuclear Regulatory Commission (NRC) to provide a report "identifying barriers to and its recommendations for streamlining the issuance of a Combined Construction and Operating License for qualified new nuclear reactors."

As you know, the Committee on Energy and Commerce and its Energy and Environment Subcommittee have jurisdiction over the NRC, and the laws it is empowered to administer. As the Chairmen of these two panels, we want to ensure that in responding to Section 401 the Commission remains cognizant of its responsibilities to comply with the substantive and procedural requirements of the Atomic Energy Act, the National Environmental Policy Act (NEPA) and NRC regulations in the issuing of Combined Construction and Operating Licenses (COL) to new nuclear power plants. These laws cannot be overridden or even challenged by a reporting requirement appended to an annual appropriations bill.

The NRC should, of course, review COL applications in an efficient fashion, without undue or unwarranted delays. However, speed of action is not the Congress's only policy interest with respect to licensing. Public confidence in the fairness and integrity of the application process requires the Commission to ensure that licensees comply with both the governing statutes and NRC regulations. The NRC must not sacrifice crucial safety evaluations, public input or adequate environmental review as part of any effort to streamline or accelerate its regulatory functions.

Under Section 185 of the Atomic Energy Act, the NRC is directed, after holding a public hearing, to "issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission's

rules and regulations.”

The Act further provides that in conducting its licensing activities, “The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission’s rules and regulations.”

In addition, NRC regulations 10 CFR Part 51 and 10 CFR Part 52 implement the requirements of the Atomic Energy Act and NEPA in regards to the licensing process. Under these regulations, for example, the NRC is required to prepare an environmental impact statement (EIS) as part of the COL application adjudication. According to the NRC website, “the NRC staff estimates that the environmental review process will take approximately 24 months. This includes scoping, issuance of the draft EIS, a comment period, and issuance of the final EIS.”

While it is true that the necessary reviews take time, the NRC’s licensing regulations were enacted to protect the public from poorly sited locations, untested reactor designs, and other factors that could lead to environmental damage, unsafe construction, or even catastrophic nuclear emergencies. We support an efficient and effective NRC licensing process that includes the safeguards codified in existing law.

In point of fact, it does not appear that the licensing process itself is to blame for the primary delays in new reactor approval. In 2007 the NRC first staffed the Office of New Reactors, separate from the Office of Nuclear Reactor Regulation, which focused *solely* on the review of new reactors. Indeed, as NRC Chairman, you have stated that the licensing delays are “almost exclusively tied to challenges with the [reactor] designs not being complete,” resulting in license applications that reference uncertified design plans¹. This bottleneck appears to have far more to do with the iterative design process, than with potential internal NRC barriers such as inefficient administration or inadequate funding. Clearly, the NRC cannot be expected to grant a COL license for a reactor without an approved reactor design.


Finally, we would note that while Section 401 mandates report submission to the Senate and House Committees on Appropriations, the House Committee on Energy and Commerce, which is the NRC’s authorizing committee, also expects to receive copies of any reports submitted pursuant to this Section.

¹ Amy Harder, “NRC At Center Of Nuclear Regulatory Bottleneck,” *National Journal Online*, 9/11/2009

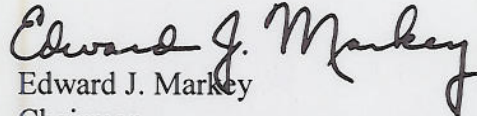
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We look forward to seeing your Commission's report on this matter, and we urge the NRC to pay careful heed to the current statutes and regulations under which it operates to ensure that the new nuclear reactor application process works properly.

Sincerely,



Henry A. Waxman
Chairman
Committee on Energy and Commerce



Edward J. Markey
Chairman
Subcommittee on Energy
and Environment

cc: The Honorable Joe Barton
Ranking Member

The Honorable Fred Upton
Ranking Member
Subcommittee on Energy and
Environment

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OFFICE OF THE SECRETARY
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