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SUBJECT: Provides views about the conduct of mandatory hearings in the new plant licensing process

ACTION: Signature of Chairman
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LETTER DATE: 09/14/2010
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NOTES:
FILE LOCATION: ADAMS

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20540-6175

September 14, 2010

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

Dear Chairman Jaczko:

I understand that you recently contacted my staff asking for more detail regarding my views about the conduct of mandatory hearings in the new plant licensing process. I'm happy to explain my expectations and concerns more fully.

I expect the Commission to conduct the mandatory hearing in a manner that is efficient, fair, predictable and consistent with its responsibility to protect public health and safety and the environment. With effective management, the Commission's responsibility to ensure safety need not be in conflict with efficiency and decisiveness. I am concerned that reluctance on the part of the Commission to embrace an efficient and predictable process, and hold itself accountable, may have a detrimental effect on nuclear plant development and increase perceptions of the agency as an unpredictable regulator.

The Atomic Energy Act's mandatory hearing requirement has become increasingly unnecessary with the passage of time as the NRC has improved transparency and public involvement in the licensing process. In the past, the NRC has proposed legislation to eliminate this requirement--an approach I support. Absent such a legislative change, I support the Bipartisan Policy Center's recommendation that the mandatory hearing should be conducted as an informal, legislative-style hearing. I am pleased the Commission's internal procedures are consistent with this approach.

As I observed at the March 5th oversight hearing of the Senate Committee on Environment and Public Works on the NRC, the Center also noted that, "Nearly all applicants indicated that certainty in scheduling is more crucial than speed." I agree and have been very clear about my dismay over the lack of complete, publicly available schedules for the issuance of new plant licenses. Nearly three years have passed since the first license application for a new plant was filed and the NRC has yet to publicly articulate projections when it expects to issue any licenses. This indicates a serious omission of effective and recognized tools that foster management and reliability, and appear to be in conflict with the NRC's Principle of Good Regulation such as:

Efficiency: The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities. The highest technical and managerial competence is required, and must be a constant agency goal...Regulatory decisions should be made without undue delay.

Reliability: Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes.

The mandatory hearing is potentially the last regulatory hurdle prior to the issuance of a license and may delay the issuance of new plant licenses. The seriousness with which the Commission manages the critical path nature of this process will signal to stakeholders whether it is committed to providing the "best possible management and administration" or whether "regulatory risk" will continue to be cited as a business risk to would-be nuclear investors.

The Commission should make clear to the public, applicants, and investors that it is committed to effectively managing new-plant licensing. It can do this by:

- Using its supervisory authority to establish schedule discipline in contested hearings;
- Timely resolution of appeals resulting from contested hearings;
- Establishing an efficient and transparent process for the mandatory hearing, including complete schedules, beginning as soon as possible after the release of final Safety Evaluation Reports and the Environmental Impact Statements; and
- Developing a record of utilizing effective managerial tools to manage both the contested and mandatory hearings.

The Commission indicated in its testimony on March 5th that it is, "...fully confident that the agency can successfully and effectively meet its regulatory responsibilities with regard to all these matters." I hope the Commission embraces these suggestions, and shows stakeholders the Commission's commitment to improve efficiency and reliability on these matters.

Sincerely,



Senator James M. Inhofe

CC: Cmsr. Kristine Svinicki
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