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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA ROSEN, STAFF DIRECTOR  
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February 7, 2011

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

Dear Chairman Jaczko:

We read with concern the NRC's response to House Energy & Commerce Chairman Fred Upton's remarks of January 27, 2011, with regard to license renewal (see attached InsideNRC article, January 31, 2011).

The Nuclear Regulatory Commission has worked hard for years to establish a reputation for reviewing license renewal applications in a fair and predictable fashion, having extended the licenses for 61 of our nation's nuclear plants in the last thirteen years. However, the agency's reputation has now been compromised by the Commission's apparent embrace of a dual standard regarding license renewal applicants: timeliness for those viewed to have no or "minimal" local opposition and excessive, unmanaged delays for applications perceived to be more controversial.

We share the Commission's respect for local residents' rights to challenge a renewal application—and we firmly believe those rights should be protected. However, according to the NRC's own Statement of Policy on Conduct of Adjudicatory Proceedings, applicants "are also entitled to a prompt resolution of disputes concerning their applications." Processes exist for the fair consideration of challenges. We expect the Commission to adhere to those processes and make decisions in a manner that balances these competing rights.

The Commission's embrace of a dual standard appears to be a new policy of the NRC – that it will take longer if there is opposition than if there is none. If the Commission feels that a dual standard is necessary, we would expect the agency to proceed through its customary rulemaking process with the requisite opportunities for public participation. As it stands, we were unaware the Commission was or even could be considering such a policy. As recently as last summer, the NRC responded to a question from Sen. Vitter regarding controversial applications by stating: "The Commission's voting process for adjudicatory matters is not influenced by external factors." This new policy or standard now clearly implies extending the process for such decision-making based on external factors.

The NRC is charged with providing regulations for the safe utilization of nuclear energy in the Atomic Energy Act. The Atomic Energy Act does not authorize that it do so in one fashion if there is no opposition and another if there is some. In fact, the NRC's Reliability Principle in its

Chairman Jaczko

February 7, 2011

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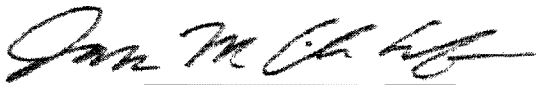
own Principles of Good Regulation states: "Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes." (emphasis added)

The degree of intervention or controversy should not be used as an excuse for delays in decision-making. By embracing a dual standard, the Commission has incentivized opponents to intervene solely because the NRC will delay the conduct of these adjudications and relicensing processes. The result is significant uncertainty in the regulatory process, which costs jobs, jeopardizes power agreements, impairs fuel purchases, and threatens the business environment in which these companies operate. This situation clearly does not "lend stability to the nuclear operational and planning processes." The Commission's response that "licenses remain valid until the NRC takes action on a final renewal decision" shows, at best, indifference to the economic realities challenging its applicants.

The Commission's remarks imply that it feels free to abandon schedule discipline for applicants perceived to be controversial. Given that both license renewal and new plant applications undergo the same hearing process, the current breakdown has implications not only for maintaining our nation's current nuclear energy generation but also building new nuclear plants. President Obama's recent executive order "Improving Regulation and Regulatory Review" states that our regulatory system must "promote predictability and reduce uncertainty." This is certainly true in regulating nuclear energy. While it is not the NRC's role to advocate the use of nuclear energy, its actions can certainly imperil it.

Please respond to the attached questions by February 24th.

Sincerely,



James M. Inhofe  
Ranking Member  
Committee on  
Environment and Public Works  
U.S. Senate



David Vitter  
Committee on  
Environment and Public Works  
U.S. Senate

Enclosures (2)

Cc: Cmsr. Kristine Svinicki  
Cmsr. William Magwood  
Cmsr. George Apostolakis  
Cmsr. William Ostendorff  
William Borchardt, Executive Director for Operations  
Stephen Burns, General Council

Questions in regard to the dual standard:

1. Please explain the process for discerning opposition to be "local." Provide citations for its definition.
2. Please describe the process for meeting the threshold of "minimal" opposition. Please provide citations for its definition.
3. Please cite the legal and regulatory basis for the dual standard including guidance for determining who qualifies for the expeditious path.
4. Was there an opportunity for the public to comment on this new standard?
5. In developing this standard, what measures have you discussed with your colleagues and when did you have those discussions? Did you consult the Executive Director and General Counsel to develop this new standard for renewals that are controversial? Please provide calendars, notes, minutes, vote sheets, e-mails, phone logs, and any other media that pertain to the development of this policy including the dates discussions were held and the standard adopted.
6. If this was not discussed and adopted by the full Commission, please cite the relevant portions of the Atomic Energy Act, the Reorganization Plan, the NRC's regulations and guidance, and published Commission procedures that support your authority to declare a new standard. Also provide any notes, documents, e-mails, phone logs, etc. of any discussions you had internally or externally on this matter.
7. If not discussed, please have your fellow commissioners, the Executive Director, and the General Counsel respond to the following question: On what date did you first hear of the new dual standard for handling controversial license renewal applications?

that its emergency planning zone would keep doses below the levels identified in the Environmental Protection Agency's protective action diagrams. Based on the approved emergency planning zone size, Hicks said, the licensee can then "look at how to implement emergency planning," such as staffing, notification and evacuation.

Reckley said NRC staff will send the industry questions on NGNP's emergency planning proposal in the next few weeks.

Because NGNP is an initiative mandated by Congress, NRC staff has said it is a top priority to review an NGNP reactor design certification application once it is submitted.

—Yanmei Xie, Washington

## Upton chastises NRC for prolonged license renewal reviews

Representative Fred Upton, chairman of the House Energy and Commerce Committee and a Republican from Michigan, is asking NRC "to provide greater transparency and certainty in the reactor license renewal process." Upton said that prolonged reviews, exceeding five years for some power reactors, "is needlessly putting plants and thousands of jobs at risk."

Upton said in a statement January 27 that NRC's license renewal reviews for Vermont Yankee and Pilgrim-1, both owned by Entergy, reached the five-year mark on that date "with no end in sight." He said "the timeline for the reactor renewal process has now doubled without explanation."

"Gone are the days of reasonable expectations for a stable and predictable regulatory process," Upton said. He cited an NRC "backgrounder on reactor license renewal" as saying that "license renewal is expected to take about 30 months, including the time to conduct an adjudicatory hearing, if necessary, or 22 months without a hearing."

NRC spokesman Scott Burnell said January 28 that the extended duration of license renewal reviews for the nuclear plants cited by Upton are not typical. "In cases where local opposition has been minimal or non-existent, the NRC has indeed kept to the average 22-month review schedules. In the cases of Vermont Yankee, Pilgrim and Indian Point [-2 and -3, also owned by Entergy], local residents have exercised their ability to legally challenge the renewal applications. The NRC respects their right to do so.

"As for Pilgrim, multiple filings of contentions, appeals and the remainder of the hearing process have required additional time to properly conduct the proceeding. The technical reviews in all these renewals have — by and large — taken the usual amount of time," Burnell said. NRC staff "did have to devote additional time to account for extensive public comment on the Indian Point draft environmental impact statement, more than 800 pages' worth of comments, at least three times the usual amount," he said.

Burnell said "the Vermont Yankee and Pilgrim licenses will remain valid until the NRC takes action on a final renewal decision."

Upton is a longtime nuclear power advocate and has supported the \$18.5 billion in federal loan guarantee authority for new power reactor projects that Congress authorized in Energy Policy Act of 2005 and allocated in 2007. Last year he was a vocal supporter of President Barack Obama's proposal to expand the loan guarantee program to \$54.5 billion, as part of the president's fiscal 2011 budget request. Congress did not approve the loan guarantee expansion plan.

A plan Upton proposed late last year for "putting Michigan back to work" called for creating programs to train workers for nuclear power plants, including Michigan's Palisades and DC Cook -1 and -2, owned by American Electric Power.

Alexa Marreno, a committee spokeswoman, said last week that Upton "has no plans at this time" to hold hearings on NRC license renewal proceedings.

—Jim Ostroff, Washington

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## FUEL AND WASTE REGULATION

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### NRC board completes hearing on Areva enrichment plant

An NRC licensing board last week wrapped up its examination of the agency staff's review of Areva Enrichment Services' proposed Eagle Rock uranium enrichment facility.

The Atomic Safety and Licensing Board, or ASLB, examined the staff's review of the license application for a centrifuge enrichment facility that AES wants to build in Idaho. Such hearings are required by NRC regulations for fuel cycle facilities. That review is documented in a safety evaluation report, which NRC published last September (NuclearFuel, 4 Oct. '10, 1).

The ASLB set aside three days for the hearing but completed it in one day on January 25. There were no interveners or contentions.

The board focused on AES' Integrated Safety Analysis, which identifies potential accident scenarios and designates items relied on for safety, or Irofs, to mitigate or prevent those accidents. The ASLB looked at the license conditions and exemptions approved by the staff.

The board also examined the company's ownership structure for foreign ownership, control, and influence considerations. AES is a wholly-owned US subsidiary of Areva SA, which in turn is a wholly-owned US subsidiary of Areva SA.

AES President and CEO Sam Shakir told the board that AES is both managed and financed independently of its parent company. He said that while he was hired by and can be fired by a management committee comprised of representatives from Areva Inc. and its French parent, he has sole responsibility and decision-making authority for safety, security, and financial