

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

September 19, 2014

The Honorable Allison M. Macfarlane
Chairman
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Macfarlane:

We write to express our concerns regarding a Nuclear Regulatory Commission (NRC) staff recommendation recently sent to the Commission for a vote: SECY 14-0087: "*Qualitative Consideration of Factors in the Development of Regulatory Analyses and Backfit Analyses*" ("qualitative factors paper"). As we have observed before, the NRC has been the gold standard for nuclear safety regulation world-wide. This is due in no small part to its disciplined use of cost-benefit analysis to ensure any regulatory changes yield safety benefits that warrant any additional costs. We are disappointed that the Commission would consider altering this long-established process, which has served the agency's safety mission and the public so well.

NRC commissioners and agency officials routinely state that our nation's nuclear plants are safe and characterize regulatory changes as "safety enhancements." In this context, deliberate and systematic cost-benefit analysis is necessary to distinguish between changes that yield valid, identifiable safety benefits and changes that merely result in unnecessary regulatory burden, diverting resources from more safety-significant priorities. Qualitative factors may be a useful consideration in decision-making. However, we do not believe the public interest is served by allowing such subjective factors to supersede rigorous cost-benefit analysis.

This Committee has raised this concern with the NRC previously. On January 15, 2013, we wrote to the NRC regarding its consideration of a staff recommendation to require the installation of so-called filtered vents at certain types of nuclear reactors:

"Without disciplined processes, there is no objective basis for distinguishing items of significant safety benefit from ideas that merely sound good. When proposals fail a cost-benefit analysis, regulators should not abandon technical rigor in favor of subjective, qualitative factors to justify one-size-fits-all regulatory changes. Rigorous technical bases encourage regulatory stability and give the agency, the public, and licensees' confidence that the NRC is pursuing justified, defensible safety improvements."

Our concern at that time was prompted by the NRC staff's November 26, 2012, paper, "*Consideration of Additional Requirements for Containment Venting Systems for Boiling Water Reactors with Mark I and Mark II Containments.*" In that paper, the NRC staff sought to impose a one-size-fits-all requirement to install filtered vents by relying on consideration of qualitative factors, even while acknowledging that "*...the safety enhancements, would not, by themselves, demonstrate that the benefits exceed the associated costs.*" The situation at that time was exacerbated by the fact that the staff had underestimated the full cost of installing filtered vents.

In its review of the filtered vents matter, the NRC's Advisory Committee on Reactor Safeguards (ACRS) noted the staff's recommendations were not cost-justified; it cited the risk of unintended consequences and recommended an option that allows "...more scope for innovation and may result in more effective solutions." The ACRS recommendation, although different from the NRC staff's, also relied on qualitative factors.

The filtered vents case illustrates two substantial drawbacks to reliance on qualitative factors: justification for changes that are not cost-beneficial, and subjectivity resulting in inconsistent outcomes.

In their current paper on qualitative factors, the NRC staff raises the question: "*...would different NRC staff at a different time, given the same information and conditions, come to a different assessment or qualitative weighting of those factors to arrive at a different recommendation?*" This is precisely what happened with the consideration of filtered vents. The NRC staff and the ACRS both cited qualitative factors as justification for two different outcomes.

We strongly agree with the NRC's "Reliability" Principle of Good Regulation, which states: "*Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition.*" In its qualitative factors paper, the NRC staff concluded that: "*...the current regulatory framework is sound.*" Adhering to the Reliability Principle, it is simply not clear why the NRC would pursue changes to a long-established regulatory process that it has again found to be sound.

Rather than seeking to supplant sound cost-benefit analysis with subjective qualitative considerations, we believe nuclear safety would be better served by improving the accuracy of costs estimates, which our oversight work has found to be frequently and significantly underestimated. As such, our chairman joined Senate Environment and Public Works Ranking Member David Vitter's request that the Government Accountability Office review the NRC's cost estimating procedures. We expect the pending GAO report to offer constructive recommendations for improving cost estimates and encourage the Commission to redirect its attention to this important aspect of its regulatory activity.

While qualitative factors may deserve consideration in decision making, we do not believe they should be arbitrarily weighted to tip the balance in favor of new requirements in situations where the requirements cannot be cost justified. Unconstrained use of qualitative factors will open the door to ever-increasing regulatory burdens without corresponding safety

improvements at a time when licensees can ill-afford it. Our January 15, 2013, letter acknowledged this dynamic:

“As it considers regulatory changes that may result in significant costs, the Commission must recognize that it has a duty to thoroughly scrutinize the costs and benefits of any changes. If strong economic headwinds force the premature closure of nuclear plants, increased regulatory burden will likely increase the number of plants prematurely closed. It is incumbent on the Commission, in light of its statutory mission, to recognize that its decisions may result in that outcome and proceed in a deliberate, thoughtful manner. Market forces do not absolve the NRC of its responsibility for ensuring that the safety significance of new requirements is sufficient to warrant any additional regulatory burden.”

That statement remains as serious today as it was nearly two years ago. Since our January 2013 letter, four nuclear reactors have shutdown prematurely and another one will do so by the end of this year. Marvin Fertel, CEO of the Nuclear Energy Institute, recently noted in a speech before the World Nuclear Association that “...we have probably somewhere between five and ten plants at risk of shutdown in competitive markets.” Against this backdrop, the NRC is pursuing approximately forty regulatory changes.

We believe the NRC’s resources would be most effectively and appropriately applied by addressing the more safety-significant priorities already under consideration and implementation by the agency. We believe the Commission should reject the staff’s recommendation to expand the use of qualitative factors in the agency’s regulatory and backfit analyses, which would divert resources to modify a sound, long-standing regulatory process. Instead, we urge the Commission to focus its attention on improving the accuracy of the agency’s cost estimates upon issuance of the GAO’s upcoming report.

To assist the committee in its oversight of this matter, please respond to the following questions no later than October 3, 2014:

1. Please provide an estimate of the industry’s costs to implement all post-Fukushima requirements/regulatory changes that the Commission has acted on.
2. Please provide an estimate of the NRC’s resources already expended to develop all post-Fukushima requirements/regulatory changes including guidance, and review and approval of industry implementation plans.
3. With regard to Enclosure 1 in the staff’s paper of qualitative factors, *List of Regulatory Actions That Rely Upon the Qualitative Consideration of Factors*:
 - Within the scope of Enclosure 1, please provide a list of Commission requirements in which quantitative requirements were unavailable and for which qualitative requirements were the sole basis used by the Commission to justify imposing the new requirement.

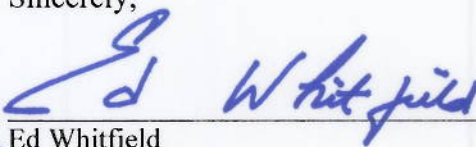
- Within the scope of Enclosure 1, please provide a list of Commission requirements for which quantitative data was the sole basis used by the Commission to impose the new regulation.
- Within the scope of Enclosure 1, please provide a list of Commission requirements where quantitative analysis was inadequate and qualitative factors were cited by the Commission to tip the balance and justify imposing the new regulation.

Should you have any questions, please contact Annie Caputo of the Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



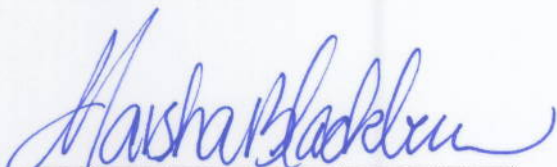
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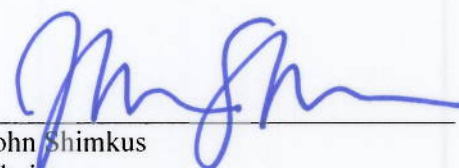
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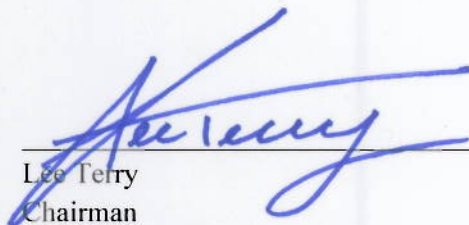
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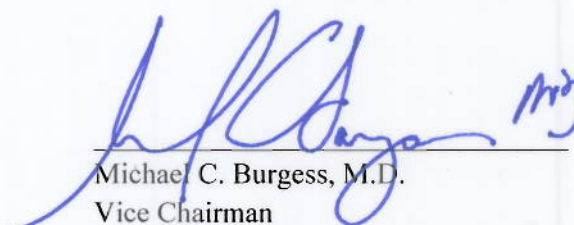
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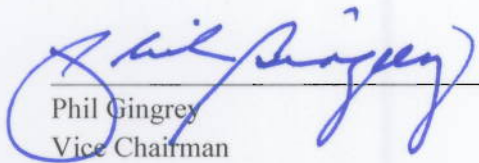
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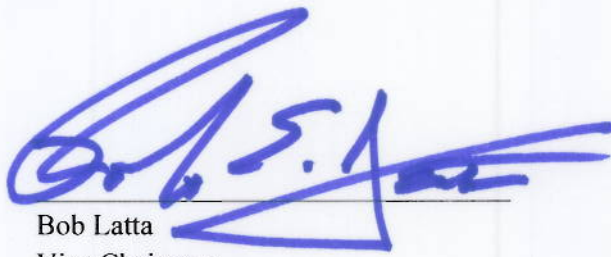


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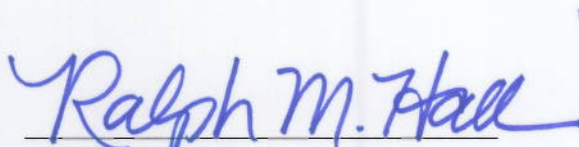
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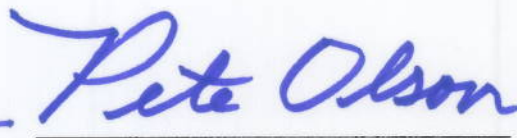


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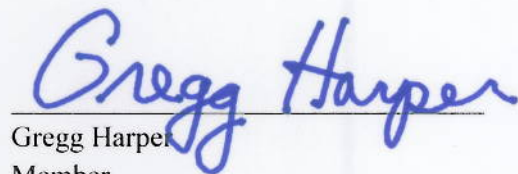
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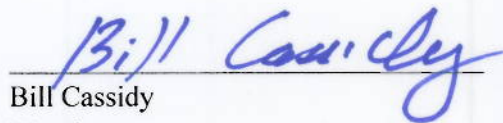
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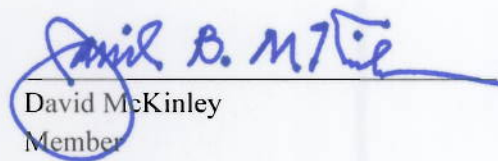
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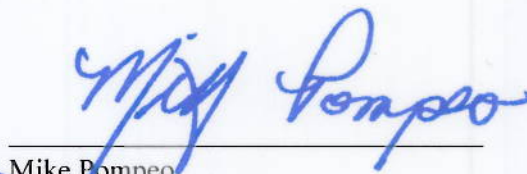
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Member



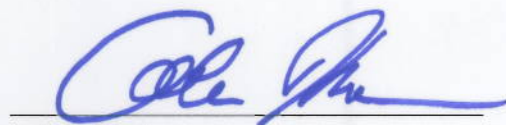
Bill Cassidy
Member



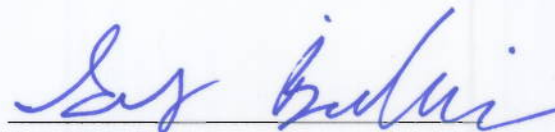
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Member



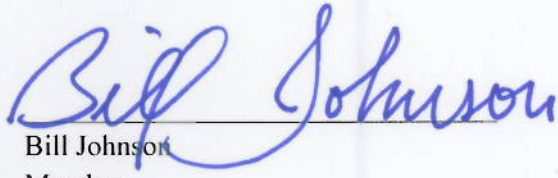
Mike Pompeo
Member



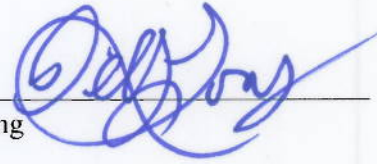
Adam Kinzinger
Member



Gus Bilirakis
Member

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Bill Johnson
Member

A handwritten signature in blue ink that reads "Billy Long". The signature is written in a cursive style with a horizontal line underneath it.

Billy Long
Member