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The Honorable John B. Breaux, Chairman  
Subcommittee on Nuclear Regulation  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

We are aware that your subcommittee is considering legislation involving the restructuring of the Nuclear Regulatory Commission through the creation of a regulatory agency headed by a single Administrator and the establishment of a Nuclear Safety Board and an Inspector General. We wish to provide several comments relative to the recommendations of the Nuclear Energy Reorganization Act of 1987, which was discussed during your subcommittee hearing on October 29, 1987.

The Advisory Committee on Reactor Safeguards (ACRS), a statutory body established under the Atomic Energy Act of 1954, as amended, has provided independent nuclear safety advice for the past thirty years to the Atomic Energy Commission (AEC), the Nuclear Regulatory Commission (NRC), the Department of Energy (DOE), and the Congress. We neither support nor take issue with the proposed bill, but wish to comment on several points, based on these years of providing advice on nuclear safety matters.

During the early years of development of the nuclear energy program, the ACRS provided technical safety advice on the design and operation of most of the research, test, naval and power reactors built and operated in the United States, including those currently owned and operated by DOE. This technical advisory function for DOE reactors has not been exercised frequently since enactment of the Energy Reorganization Act of 1974, although a Memorandum of Understanding to provide ACRS advice exists. We note that the Reorganization Act of 1987 would empower the Nuclear Safety Board (NSB) to provide a form of independent safety oversight of DOE reactors.

During those early years, the regulatory staff of the AEC was small and relatively inexperienced with the new technology, and the ACRS made contributions which were widely regarded as valuable to the safety of U.S. nuclear facilities. Many of these early contributions were adopted by other countries.

In recent years, the regulatory staff of the NRC has grown significantly in size and in technical capability; however, the ACRS still serves as the national corporate repository for much of the safety philosophy and technical rationale developed over the years. One role of the ACRS is to review and advise on the nuclear safety related activities and decisions of the NRC. This function is performed at a technical depth and breadth beyond that which the NRC Commissioners are able to provide. This technical ACRS review and exchange of views results in more carefully and thoroughly developed and

documented NRC positions and regulations. It also provides a public forum for discussion of differing or alternative technical views. An agency staff must eventually comply with the wishes of the agency head even when disagreement on safety or regulatory matters may exist; a statutory advisory body can speak its conscience and enunciate unpopular but technically important views in the face of continuing differences. One important strength of the ACRS resides in its authority to identify and evaluate important safety issues on its own initiative, and its ability and willingness to speak out independently on these issues, a strength implicit in its status as a statutory body. We strongly believe that the Administrator of the proposed Nuclear Energy Regulatory Agency (NERA) will continue to need such broad technical policy advice from an independent source.

A single Administrator will not have an opportunity to discuss technical policy issues with other commissioners and thus will need assistance in weighing the conflicting views and various alternatives that must be considered as part of assuring public health and safety for a complex technology. Although the Administrator will have access to the staff of the NERA, it will be important to have independent advice from a group of experienced individuals capable of understanding and resolving the conflicting views amongst the NERA Staff, industry, and others. We believe that such advice can best be provided by a group of outside, nongovernment experts who are familiar with the day-to-day safety and regulatory problems of nuclear energy. This group should have the continuity of responsibility assured by statute, in contrast to being a group of consultants asked to address issues on an ad hoc basis. Most countries with major nuclear power programs continue to find such advisory bodies important in developing safety policies, regulations and programs. The ACRS meets frequently with these other national advisory bodies to exchange views and information.

The Administrator's need for independent advice will not be satisfied by the NSB. One of the major functions of the NSB would be the investigation of significant events; the Administrator will continue to need advice on aspects of regulation and safety philosophy directed toward the prevention of accidents from a broader perspective. Further, it is inevitable that the NSB and NERA, as independent government bodies, will develop adversarial roles; after all, the NSB will have oversight responsibilities over NERA. The Administrator will still need an independent source of advice in developing policies and positions on complex technical issues. Sometimes this will be in response to NSB recommendations. In addition, we note that the proposed size of the NSB is too small to assume the current functions of the NRC Office for Analysis and Evaluation of Operational Data and the ACRS for all licensed facilities, let alone to assume the oversight responsibility for facilities and activities of DOE.

We hope that these comments on the Nuclear Energy Reorganization Act of 1987 will be helpful. They are made in the interest of providing continuing assurance of the protection of public health and safety following any reorganization that Congress may deem necessary.

Sincerely,

William Kerr  
Chairman

cc: Senator Alan K. Simpson  
Rep. Morris K. Udall  
Rep. Manuel Lujan  
Rep. Philip R. Sharp  
Rep. Carlos J. Moorhead  
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