



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

May 1, 1980

OFFICE OF THE
CHAIRMAN

Mr. Ronald K. Peterson
Office of Legislative Affairs
Office of Management and Budget
Old Executive Office Building
Washington, D.C. 20503

COMMISSION
CORRESPONDENCE

Dear Mr. Peterson:

The Commission has reviewed the OMB draft bill "To establish a Nuclear Safety Oversight Committee" forwarded by your letter of March 26, 1980. The bill would authorize by statute the committee which the President created on March 18, 1980, in E.O. 12202. Recognizing that the committee's purpose is to advise the President on the progress of Federal, State and industry actions in response to the recommendations of the President's Commission on Three Mile Island, the Commission does not object to the draft bill.

The Commission, however, believes that the characterization of the committee's broad function as "oversight" rather than "advisory" could raise questions about the Commission's independence from the Executive Branch. Therefore, the Commission recommends that the accompanying letter to the Congress include an explicit statement that the committee is not to seek to influence decisions or actions regarding matters before the Commission. Since we believe the intent of the bill to be in accord with such a limitation on the committee, its explicit statement would not entail a change of the bill or the functions of the committee.

The Commission recognizes that the work of the committee could serve as a basis for actions and proposals by the Executive Branch that might bear upon the Commission's regulatory activities. We recommend the letter accompanying the draft bill contain a statement that the Executive Branch will consult NRC and consider the Commission's views, in developing any such actions or proposals. We are confident this is what the Executive Branch would do in any event.

Commissioners Gilinsky and Bradford have the following separate comment:

Clearly, the President should have complete freedom to structure a Committee to advise him on nuclear safety. However, establishing the Nuclear Safety Oversight Committee by statute would undermine the stature and authority of the Nuclear Regulatory Commission and therefore the public acceptability of its decisions. Moreover, the integrity of the regulatory process would be brought into question by a statutory Oversight Committee which reports, in part, to the Secretary of Energy. DOE's long-term waste management facilities will be subject to NRC licensing as will other DOE activities.

The consequences, both real and apparent, of statutorily establishing the Oversight Committee can readily be appreciated if one considers the consequences of statutorily establishing a five-person SEC Oversight Committee reporting to the Secretaries of the Treasury and Commerce or an eleven-person I.C.C. Oversight Committee reporting to the Secretaries of Commerce and Transportation.

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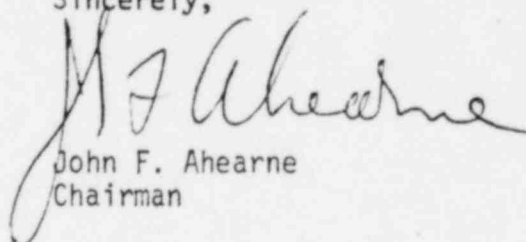
Mr. Ronald K. Peterson

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Therefore, Commissioners Gilinsky and Bradford feel that the proposed bill should not be submitted to Congress.

The Commission appreciates the opportunity to comment on the draft bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. F. Ahearne". The signature is written in dark ink and is positioned above the printed name and title.

John F. Ahearne
Chairman

Enclosure:
Letter of Chairman Ahearne
to William M. Nichols, Esq.,
dated Feb. 7, 1980



NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Dupe of
80002260588

February 7, 1980

C. AIRMAN

William M. Nichols, Esq.
General Counsel
Executive Office of the President
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Nichols:

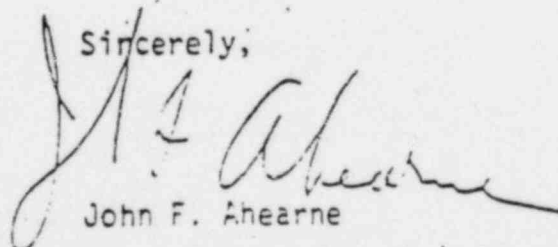
At your request, the Commission has reviewed the draft executive order which would establish the "Oversight Committee on Nuclear Safety." We recognize the importance of the President's interest in tracking the Commission's actions which respond to the report of the President's Commission on the Accident at Three Mile Island; thus, we understand the reason for the Committee. However, we have two minor concerns about the Committee.

Our first concern is that the draft executive order can be interpreted to create doubts about the Commission's independence because the order characterizes the Committee's broad function as "oversight" rather than "advisory," and because it grants the Committee largely undefined authority to obtain information, advice and assistance from other agencies, including the Commission. Consequently, we would urge that the order state explicitly that the Committee is not to undertake substantive decisionmaking regarding cases or rulemakings pending before the NRC. Moreover, we believe that the order should specify in greater detail (1) the categories of "information, advice or assistance" that the Committee is expected to need, (2) the statutes and authorities which are to be consulted in construing the terms "to the extent permitted by law," and (3) the procedures to be followed for Committee requests directed to the Commission.

Our second comment relates to the ambiguity in the draft order about the Committee's role with respect to Federal safety research for light water reactors. We are unable to determine what activities the Advisory Committee would be expected to perform, incident to its "recommending the general context of a Federal research program." The Energy Reorganization Act of 1974 specifies the Commission's statutory role in safety research, as well as the responsibilities of other Federal agencies (42 USC §5845).

In closing, the Commission wishes to emphasize its intention to cooperate fully and voluntarily with the President and the Committee with respect to TMI followup actions. We trust that our comments on the draft executive order are helpful.

Sincerely,


John F. Ahearne

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

March 26, 1980

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer ✓
Nuclear Regulatory Council ✓
Department of Health, Education,
and Welfare
Department of Energy
General Services Administration
Office of Personnel Management
Federal Emergency Management Agency
Council on Environmental Quality
Department of Justice
Environmental Protection Agency

SUBJECT: OMB draft bill, "To establish a Nuclear Safety
Oversight Committee."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19. This draft bill is intended to implement the President's recommendation to establish the subject Committee as announced in his response to the Recommendations of the President's Commission on the Accident at Three Mile Island. Accordingly, the bill is patterned after Executive Order 12202 (attached), dated March 18, 1980, which temporarily establishes the Committee.

A response to this request for your views is needed no later than April 7, 1980. If your comments are not received by this time, we will assume you have no objection to this bill. Oral comments are acceptable.

Questions should be referred to Mark Kerrigan (395-4956) or to Jim Murr (395-3386), the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

cc: Kitty Schirmer Roger Greene Gael Sullivan
Hilda Schreiber Ron Kienlen/GC

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DRAFT

Honorable Walter F. Mondale
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

On December 7, 1979, President Carter responded to the Kemeny Commission investigation of the accident at Three Mile Island. One of the key items he specified was the establishment of an oversight committee to advise him on the success of the Nuclear Regulatory Commission (NRC), industry and State governments in implementing necessary measures for improved nuclear safety. The "Nuclear Safety Oversight Committee" was established by Executive Order 12202 on March 18, 1980. The Executive Order provides for a termination date of September 30, 1980. The enclosed legislation provides for authorization of the Committee through September 30, 1982.

The Committee's purpose will be to report regularly to the President on the progress being made in improving nuclear safety. In particular the Committee will advise on the extent of progress made by the NRC in effecting management, substantive and procedural reforms; on whether or not the NRC and nuclear power industry are fulfilling their responsibility in upgrading the capabilities and training of utility operators; and the progress of the Federal Emergency Management Agency on its review of State and local off-site emergency planning preparedness. Among its other functions, the Committee will advise on the success of developing a coordinated program to improve worker and public health safety with regard to radiological hazards.

Your assistance in obtaining the enactment of this legislation before September 30, 1980, will enable the Nuclear Safety Oversight Committee to fulfill its important oversight and advisory role. Enactment of this legislation would be in accord with the President's program for increased nuclear safety.

Sincerely,

James T. McIntyre, Jr.
Director

Enclosures

A BILL

To establish a committee to advise the President on progress
being made to improve nuclear safety.

Be It enacted by the Senate and House of Representatives
of the United States of America in Congress assembled, that
this Act may be cited as the "Nuclear Safety Oversight
Committee Act."

Sec. 2. There is hereby established in the executive
branch of the United States the Nuclear Safety Oversight
Committee, hereinafter referred to as the "Committee."

Sec. 3. The Committee shall--

(1) periodically report to the President, the
Secretary of Energy, and the Secretary of Health,
Education, and Welfare the Committee's advice on the
progress being made in improving nuclear safety. The
Committee's report shall also advise on the progress
being made in implementing those recommendations of the
President's Commission on the Accident at Three Mile
Island which were approved by the President (December 7,
1979);

(2) advise on the extent of progress made by the
Nuclear Regulatory Commission in effecting management,
substantive, and procedural reforms to improve safety.
The Committee shall evaluate the recommendations of the
Chairman of the Nuclear Regulatory Commission concerning
the possible modification of the responsibilities of the
Advisory Committee for Reactor Safety;

(3) advise as to whether or not the Nuclear
Regulatory Commission and the nuclear power industry are
fulfilling their responsibilities in upgrading the
capabilities and training of utility operating and
management personnel;

(4) evaluate the progress being made in making or
encouraging technical modifications to power reactors to
improve safety, including improved control room design,
and evaluate the Federal program in safety research;

(5) advise on the success of developing a
coordinated program to improve worker and public health
safety;

(6) advise on the progress of the Federal Emergency
Management Agency in its review of State and local
off-site emergency planning and preparedness, and
evaluate the progress of State and local governments in
establishing emergency response plans;

(7) evaluate the progress being made in improving public information on nuclear safety, and shall evaluate the progress of the Federal Emergency Management Agency in coordinating any Federal response to potential nuclear emergencies;

(8) to the extent the Committee deems it necessary to carry out its other functions, monitor the activities of Federal and State agencies and the nuclear power industry;

(9) enter into agreements with the Nuclear Regulatory Commission, the Department of Health, Education, and Welfare, the Department of Energy, the Federal Emergency Management Agency, and other Federal agencies, as well as State agencies and the nuclear power industry, on procedures for obtaining the information necessary to monitor their activities and to carry out the Committee's advisory functions;

(10) prepare and transmit to the President, as soon as possible, a report on the progress of the Nuclear Regulatory Commission and of the nuclear utilities in upgrading the selection criteria and the training of utility operating personnel. The Committee shall report to the President its other findings, evaluations, and recommendations from time to time as it deems appropriate, but in any event, at least once a year; and

(11) include in its reports the Committee's advice as to the adequacy of the information it has received from Federal and State agencies and from the nuclear power industry, and its assessment of the cooperation it has received from them.

TITLE I--COMMITTEE MEMBERSHIP AND AUTHORITIES

Sec. 101(a) The Committee shall be composed of five persons, who do not receive a salary from the Federal Government, to be appointed by the President or persons already appointed by the President under Executive Order No. 12202, dated March 18, 1980.

(b) The Chairperson of the Committee shall be designated by the President from among the members.

(c) A vacancy in the Committee shall be filled in the manner in which the original appointment was made.

(d) Three members of the Committee shall constitute a quorum for transacting business of the Committee except that a lesser number may hold hearings and conduct other information-gathering meetings.

(e) In carrying out its duties under this Act, the Committee, or any duly authorized committee thereof, is authorized to hold such hearings and take testimony, with respect to matters to which it has a responsibility under this Act, as the Committee may deem advisable. The Chairperson of the Committee or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Committee or before any committee thereof.

(f) The Committee may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence which is required by the Committee to fulfill its responsibilities under this Act.

(g) The Committee may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties and functions. Upon request of the Chairperson, the head of any such Federal agency shall furnish such information to the Committee subject to applicable laws.

(h) The Committee may establish such rules and regulations, relating to administrative procedure, as may be reasonably necessary to enable it to carry out the provisions of this Act.

(i) The Committee shall cease to exist 90 days after submission of its final report to be submitted no later than June 30, 1982.

TITLE II--ADMINISTRATIVE PROVISIONS

Sec. 202(a) Members of the Committee may be compensated at a rate not to exceed the rate specified at the time of such service for grade GS-18 of the General Schedule for each day they are engaged in the actual performance of Committee duties, including travel time; and while so serving away from their homes or regular places of business, all members of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(b) The Committee Chairperson is authorized to--

(1) appoint an Executive Director who shall be paid at a rate not to exceed the rate of basic pay for GS-18 of the General Schedule; and

(2) appoint and fix the compensation of such other personnel as may be necessary to carry out the provisions of this Act, in accordance with Chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

(c) This Committee is authorized to procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, United States Code, but at rates not to exceed the rates specified at the time of such service for grade GS-18 in section 5332 of such title. Experts and consultants may be employed without compensation if they agree to do so in advance.

(d) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist the Committee in carrying out its duties under this Act.

(e) The Committee is authorized to enter into contracts with Federal and State agencies, private firms, institutions, and individuals for the preparation of reports and other activities necessary to the discharge of its duties and responsibilities.

(f) The Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

TITLE III--APPROPRIATION AUTHORIZATION

Sec. 301. There is authorized to be appropriated, without fiscal year limitation, such sums as may be necessary to carry out the provisions of this Act.

Executive Order 12202 of March 18, 1980

Nuclear Safety Oversight Committee

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), a committee to advise on the progress of Federal and State authorities and the nuclear power industry in improving the safety of nuclear power and in implementing the approved recommendations of the President's Commission on the Accident at Three Mile Island, it is hereby ordered as follows:

1-1. Establishment of the Committee.

1-101. There is established the Nuclear Safety Oversight Committee.

1-102. The membership of the Committee shall be composed of five persons appointed by the President from among citizens who do not receive a salary from the Federal government. The President shall designate a Chairman from among the members of the Committee.

1-2. Functions of the Committee.

1-201. The Committee shall periodically report to the President, the Secretary of Energy, and the Secretary of Health, Education, and Welfare the Committee's advice on the progress being made in improving nuclear safety. The Committee's report shall also advise on the progress being made in implementing those recommendations of the President's Commission on the Accident at Three Mile Island which were approved by the President (December 7, 1979).

1-202. The Committee shall advise on the extent of progress made by the Nuclear Regulatory Commission in effecting management, substantive, and procedural reforms to improve safety. The Committee shall evaluate the recommendations of the Chairman of the Nuclear Regulatory Commission concerning the possible modification of the responsibilities of the Advisory Committee for Reactor Safety.

1-203. The Committee shall advise as to whether or not the Nuclear Regulatory Commission and the nuclear power industry are fulfilling their responsibilities in upgrading the capabilities and training of utility operating and management personnel.

1-204. The Committee shall evaluate the progress being made in making or encouraging technical modifications to power reactors to improve safety, including improved control room design, and evaluate the Federal program in safety research.

1-205. The Committee shall advise on the success of developing a coordinated program to improve worker and public health safety.

1-206. The Committee shall advise on the progress of the Federal Emergency Management Agency in its review of State and local off-site emergency planning and preparedness, and evaluate the progress of State and local governments in establishing emergency response plans.

1-207. The Committee shall evaluate the progress being made in improving public information on nuclear safety and shall evaluate the progress of the Federal Emergency Management Agency in coordinating any Federal response to potential nuclear emergencies.

1-208. To the extent the Committee deems it necessary to carry out its other functions, the Committee shall monitor the activities of Federal and State agencies and the nuclear power industry.

1-209. The Committee shall enter into agreements with the Nuclear Regulatory Commission, the Department of Health, Education, and Welfare, the Department of Energy, the Federal Emergency Management Agency, and other Federal agencies, as well as State agencies and the nuclear power industry on procedures for obtaining the information necessary to monitor their activities and to carry out the Committee's advisory functions.

1-210. The Committee shall include in its reports the Committee's advice as to the adequacy of the information it has received from Federal and State agencies and from the nuclear power industry; and, its assessment of the cooperation it has received from them.

1-211. The Committee shall prepare and transmit to the President, as soon as possible, a report on the progress of the Nuclear Regulatory Commission and of the nuclear utilities in upgrading the selection criteria and the training of utility operating personnel. The Committee shall report to the President its other findings, evaluations, and recommendations from time to time as it deems appropriate, but in any event, at least once a year.

1-3. *Administrative Provisions.*

1-301. The Chairman of the Committee is authorized to appoint and fix the compensation of a staff of such persons as may be necessary to discharge the Committee's responsibilities, subject to the applicable provisions of law, including the Federal Advisory Committee Act, as amended, and Title 5 of the United States Code.

1-302. To the extent authorized by law and requested by the Chairman of the Committee, the General Services Administration shall provide the Committee with necessary administrative services, facilities, and support on a reimbursable basis.

1-303. The Department of Energy and the Department of Health, Education, and Welfare shall, to the extent permitted by law and subject to the availability of funds, provide the Committee with such facilities, support, funds and services, as may be necessary for the effective performance of the Committee's functions.

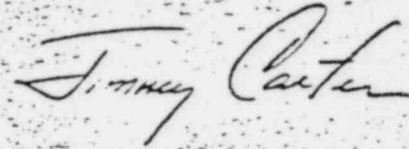
1-304. The Committee may request any Executive agency to furnish such information, advice or assistance it deems necessary to carry out its functions. Each agency shall, to the extent permitted by law and subject to the availability of funds, furnish the information, advice or assistance requested by the Chairman of the Committee.

1-305. Each member of the Committee may receive compensation at the maximum rate now or hereafter prescribed by law for each day such member is engaged in the work of the Committee (5 U.S.C. 3109 and rules pursuant to the Federal Advisory Committee Act, as amended). Each member may also receive travel expenses, including per diem in lieu of subsistence (5 U.S.C. 5702 and 5703).

1-4. *General Provisions.*

1-401. The functions of the President under the Federal Advisory Committee Act, as amended, which are applicable to the Committee, except that of reporting annually to the Congress, shall be performed by the Administrator of General Services.

1-402. The Committee shall terminate on September 30, 1980.



THE WHITE HOUSE,

March 18, 1980.

R Doc. 80-8808

[ed 3-19-80: 11:10 am]

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