

July 8, 1980

Statement of John F. Ahearne, Chairman
U.S. Nuclear Regulatory Commission

Mr. Chairman, members of the Committee, the Commission appreciates this opportunity to express its views on the President's Reorganization Plan No. 1 of 1980.* Following delivery of the Commission's statement, individual Commissioners have statements which they would like to deliver at that time. I disagree with the following positions taken by the Commission.

The Commission's fundamental evaluation of the Reorganization Plan is this: The Plan will worsen, rather than improve, the Commission's organization and structure. It will not lead to better nuclear regulation or safer nuclear power plants. It will, however, lead to friction and distrust within the Commission and may well direct the Commission's attention away from nuclear safety and enmesh the Commission in time consuming debates about the prerogatives of the Chairman and the full Commission, and the right of individual members to have access to information to which the Chairman has access.

We strongly believe that the Commission format is worth retaining because of the benefits associated with the diversity of views of its members in the formulation of nuclear safety policy. Yet, the real price for this Plan that you have been asked to approve, and the unstated consequence of concentrating power in the Chairman, is a severe curtailment of the Commission process.

* Commissioner Hendrie was unavailable and did not participate in the preparation of the Commission's statement.

It is desirable for the Chairman of this or any Commission to have a larger administrative role than the other members of the Commission. However, the Chairman's larger role should be built, and should depend for its continued existence, on the understanding and acceptance of the other members. This relationship between the Chairman and the other Commissioners can serve as a mechanism for accountability and can make the Chairman's larger role a positive feature of the agency's discharge of its responsibilities. However, it is precisely this relationship between the Chairman and the other members which the Reorganization Plan would curtail. The Plan's provisions on appointment of Staff, staff reporting requirements, and access of Commissioners to information can only exacerbate any divisive environment within the Commission.

Under the Plan, the Chairman's role will no longer depend on the acceptance of the other members; his preeminent powers will often enable him to act without regard to their wishes.

- ° The Chairman will appoint all but two of the key NRC Staff personnel. Staff appointments are important because the Staff provides basic support functions for the full Commission in safety policy development and enforcement. The Commission would continue to appoint only the Directors of Nuclear Reactor Regulation and Nuclear Materials Safety and Safeguards.

There is no rational explanation for this division of Staff appoint powers in the Plan. This illogical appointment system could well become a source of conflict within the Staff. The two officials appointed by the Commission will report to and be supervised by the Chairman or his appointee, the Executive Director for Operations; both directors will be surrounded in the Staff by officials whom the Chairman alone appoints.

- The Chairman has a veto over all other key appointments, including the General Counsel, the Director of Policy Evaluation, the heads and members of the adjudicatory panels, and the members of the Advisory Committee on Reactor Safeguards.

In the case of the Advisory Committee, whose function it is to advise the Commission on nuclear safety issues and whose members sit for four-year fixed terms, the potential influence on nuclear safety of the Chairman's veto is graphically illustrated by the fact that the Chairman will be able to prevent the reappointment of a member, without cause.

- The Chairman will be the sole supervisory and reporting authority for the Staff, unless he chooses to delegate that authority.

This authority opens a broad avenue for the Chairman to exercise substantial control in nuclear safety policy, in addition to his role as a voting member of the Commission. The Chairman's control will be most evident early in the critical stage of policy development by the Staff, and late at the equally critical stage of policy enforcement. This role for the Chairman will hinder, rather than foster, increased Commission involvement in nuclear safety policy.

Concentration of power over Staff in the Chairman is not an academic or hypothetical matter. It creates the real possibility of a minority Chairman who can frustrate the will of the Commission majority through his power to appoint and supervise the Staff. A majority Chairman does not need such a battery of authority because he can expect to win Commission acceptance of his appointments and actions. Thus, the dangers associated with a minority Chairman under the Plan are not only serious but unnecessary.

At the same time that the Plan would strip the Chairman's strengthened role from its connection to Commission acceptance, it would reduce the role of the Commission to make it very much dependent upon the Chairman. By and large, Commissioners will be permitted to be informed about agency operations only to the extent the Chairman wants them to be informed.

- The Chairman could withhold information relating to the administration and management of the agency. This means, for example, that the Commission will likely not know the true nature or extent of the Chairman's control over Staff policy papers which are forwarded to the Commission. The Plan also provides an arguable basis for withholding other information. A Chairman might attempt to withhold significant material, such as inspection information, on that basis.
- The Chairman will largely control the extent to which individual Commissioners may receive answers to their questions from the Staff. Many of these questions can be expected to raise, or relate to nuclear safety issues.

No matter how often it is said that ultimate authority will continue to reside in the full Commission under the Plan, this is simply not so. The Plan provides no means for the Commission to hold the Chairman accountable with respect to a large number of his actions. Nor does the Plan give the Commission any means of requiring the Staff to comply with the Commission's policies.

- The authority of the Commission extends to rulemaking, adjudication and policymaking, but not to any other matter of agency business even though it may bear upon nuclear safety. The Commission is not free to take up

a particular matter outside this sphere of activity even though a majority believes the Chairman has abused his power.

- While the Chairman is to be governed by the general policies and decisions of the Commission in his actions, he will have the power to restrict access to information and leave the Commission in the dark about what he is doing, or whether it is consistent with Commission safety policy.

In sum, the Plan will adversely alter the structure by which nuclear safety is regulated. Moreover, a very real practical consequence of a strong Chairman and a weak Commission will be increased Executive Branch control over nuclear regulation. The President's power to appoint and remove the Chairman makes the Chairman's accountability to the President very clear. Under the Plan, a Chairman with allegiances to the Executive Branch would have extensive powers over NRC organization and considerable control over the shape of nuclear regulation. Because of the limitation on access to information, individual Commissioners will not be informed or able to exercise a meaningful check on the Chairman's actions which have substantive import for nuclear safety. Thus, the Plan contains the worst features of the single administrator and collegial agency proposals. Because the Executive Branch influence will be in secret, there will be no accountability,

but at the same time, the independence, openness and diversity that justify a Commission may be undermined. The public's scepticism about the adequacy of nuclear safety regulation is hardly likely to be dispelled by this effort to reduce the independence and effectiveness of the regulators. If public confidence is to be restored in the government's determination to place the public health and safety first, that will come through strengthening, not weakening, regulatory independence and through insistence on strict, tough nuclear regulation.

Changes in the Plan are necessary if effective regulation of nuclear safety is to continue under an independent Commission.

- ° The right and power of the Commission, by majority vote, to take up any matter of agency business must be explicitly recognized if the Commission is to act as a useful check on the powers of the Chairman. This change would leave the Chairman free to act unless a majority voted otherwise in a particular situation. Of course, the Chairman would remain able to deal with emergencies as necessary.
- ° The principle of full access to information for each Commissioner, which has been a part of nuclear regulation since 1955, should not be curtailed.
- ° The list of Staff officers appointed by the Commission should be enlarged to include the Executive Director

for Operations, the Executive Legal Director, and the Directors of Research, Standards Development and Inspection and Enforcement.

- The role of the Executive Director for Operations should be defined in the Plan as the Chief Staff Officer, to whom the Staff reports, who acts as the Commission's agent, under the general supervision of the Chairman on behalf of the Commission, in managing the day-to-day operations of the agency.
- The Chairman should not have the power to veto appointments to the ACRS and adjudicatory boards.
- No review of the causes of management difficulties of the NRC should overlook the urgent need for the agency to be housed at a single location. The Administration has been supportive of that goal.

Mr. Chairman, this completes the Commission's statement on the Reorganization Plan. .



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

January 7, 1980

The Honorable James T. McIntyre, Jr.
Director, Office of Management and Budget
Room 255
Old Executive Office Building
Washington, D.C. 29593

Dear Mr. McIntyre:

In his December 7, 1979 statement, the President said he would shortly submit to the Congress a reorganization plan for NRC. He further stated that the plan would (1) strengthen the role of the Chairman as the chief executive officer, (2) empower the Chairman to select key personnel, and (3) authorize the Chairman to act on the Commission's behalf in an emergency. The Commission understands that the Office of Management and Budget is to prepare the plan, and wants to submit to OMB its views on the topics to be addressed in the plan.

The Commission agrees that the central premise of any reorganization plan should be the retention of the collegial body. I would have personally preferred the course of a single-head, Executive branch agency, as proposed by the President's Commission on the Accident at Three Mile Island. However, the President's decision was to retain the collegial structure, and that decision clearly has wide support both inside and outside this Commission.

It is the view of the Commission that retention of the Commission structure logically requires the Commissioners as a collegial body to possess the basic authority typically held by the heads of other administrative agencies. The Commission believes that this authority must inexorably extend to any matter that the Commission, acting in its collegial role as head of the agency, determines to be important to the mission of the agency. Only then can it ensure the proper discharge of the agency's statutory responsibilities. Since I am not fully in accord with this principle, my views differ in some respects from the position of the Commission. I will provide those views to you at the end of this letter.

Turning to the specific items to be addressed in the plan, the Commission's position is as follows:

1. The Respective Roles of the Commission as a Collegial Body, the Chairman, and the Executive Director for Operations. The collegial Commission making decisions, significant Commission, and such other

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

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February 6, 1980



The Honorable James T. McIntyre, Jr.
Director, Office of Management and Budget
Room 255
Old Executive Office Building
Washington, D.C. 29593

Dear Mr. McIntyre:

In its January 7, 1980 letter to you regarding the NRC reorganization plan, the Commission stated that it intended to deliberate further on the plan and would provide additional recommendations. This letter contains those recommendations:

1. In the past, the Commission has requested statutory status for the Office of Inspection and Enforcement. The importance of this office is comparable to that of the other NRC offices with statutory status, and it actually has a larger staff than those other offices. However, although there is widespread agreement on the need for stronger inspection and enforcement action, the Commission is considering a variety of managerial and structural alternatives to best achieve these goals. The Commission will make its recommendations as to how to best strengthen the inspection and enforcement functions as soon as it resolves these outstanding issues.
2. The reorganization plan should clarify the respective roles of NRC and FEMA in the review and approval of State and local plans for offsite emergency response to nuclear accidents. In his December 7 statement, the President directed FEMA to take the lead for all off-site nuclear emergency planning and response. However, under current law, NRC continues to have responsibility for a review of State and local emergency plans insofar as these plans are significant to licensing decisions. As you may know, NRC has recently proposed new rules which would as a general matter require NRC concurrence in appropriate State and local emergency plans as a condition to its granting licenses. In the event that NRC does not concur in such plans affecting an operating plant, the proposed rules present alternatives for NRC action which could include eventual shutdown of the plant. Further, the adequacy of such plans will be an open issue in NRC licensing and enforcement proceedings, irrespective of the findings and determinations of FEMA. The Commission will continue its cooperative efforts by FEMA.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
ADVISORY COMMITTEE ON REACTOR SAFEGUARDS
WASHINGTON, D. C. 20555

January 15, 1980

Honorable John F. Ahearne
Chairman
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Subject: RECOMMENDATIONS OF PRESIDENT'S COMMISSION ON ACRS ROLE

Dear Dr. Ahearne:

The following comments are offered in response to Mr. Chilk's letter of November 9, 1979 requesting that the ACRS provide the Commission with its views and analysis of the role of the ACRS as contained in the recommendations of the report of the President's Commission (PC) on the Accident at Three Mile Island. Individual recommendations from the report are listed below with ACRS comments following.

1. "The Advisory Committee on Reactor Safeguards (ACRS) should be retained, in a strengthened role, to continue providing an independent check on safety matters." The ACRS agrees.
2. "The members of the Committee should continue to be part-time appointees;...." The ACRS agrees.
3. "The staff of ACRS should be strengthened to provide increased capacity for independent analysis." The ACRS agrees that current staff support is inadequate to provide suitable independent-analysis capability; to keep abreast of NRC Staff, industry, and foreign group activities on specific safety matters; to provide technical and background information to the members so the latter can make the best use of their limited time; and to provide proper support to the numerous ACRS subcommittees. The Committee therefore requests that ten additional, senior-staff positions be authorized for the ACRS staff in order to meet the sense of the PC's recommendations and to provide an adequate technical support base for improved operation of the Committee. These positions are intended to be in addition to those authorized in the Fellowship Program. However, if budgetary limitations prevent this level of support, the Committee would accept some independent, senior positions.

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is noted that the help of the very useful in the assembly of the specific analysis. It is noted that the ACRS could obtain such short-

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

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CHAIRMAN

Mr. Harrison Wellford
Executive Associate Director
for Reorganization & Management
Office of Management & Budget
Room 246
Old Executive Office Building
Washington, DC 20503

Dear Mr. Wellford:

The Commission appreciates the opportunity to comment on the early working draft, dated February 15, 1980, of the NRC reorganization plan.

On the general matter of the powers of the Chairman vis-a-vis those of the collegial Commission, the draft plan does not reflect the Commission's earlier recommendation that the collegial Commission should continue to be the fundamental authority of the agency. The Commission had proposed this principle could be maintained by giving a majority of Commissioners so voting the power to call any matter of agency business, including personnel matters, before the collegial body for decision. The assumption was that with the normal scope of Commission and Chairman functions defined as they are in the draft plan, the exercise of this ultimate collegial authority in matters normally handled by the Chairman would be rare, and would occur only in cases where a majority felt the Chairman was abusing his prerogatives. The Commission believes it to be a useful check on the powers of the Chairman, and one with which a reasonable Chairman would have no great problem.

By way of comments on specific points:

1. The Commission understands the words "functions ... concerned with ... policy formulation for ... the licensing and related regulatory functions of the Commission ..." (Sec. 1.(a)), to include such matters as the agency's policy, planning, and program guidance documents, the budget, and any significant changes in the way the staff carries out its regulatory duties or in the organization of the staff for those duties. If the Commission is mistaken in this reading, then further definition of "policy formulation" should be provided in the draft plan. The Commission would oppose a narrower reading.

Also, the Commission would expect that in cases of dispute as to whether instituted such "policy formula-
ould determine the matter. If
e Chairman make such determina-
The Commission would oppose
determinations.

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ENCLOSURE 9



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

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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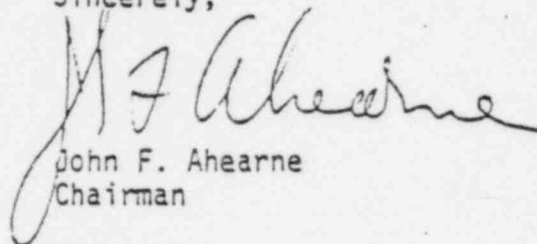
Mr. Ronald K. Peterson

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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



February 7, 1980

CHAIRMAN

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.

ally;

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May 1, 1980

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

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

Sincerely,

Original Signed By
John F. Ahearne

John F. Ahearne
Chairman

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

Cleared with all Cmrs.' Offices by SECY C/R

OFFICE	OGC	SECY	OCA <i>[Signature]</i>		
SURNAME	W. Reamer	TCombs <i>[Signature]</i>	SKent		
DATE		4/30/80	4/30/80		