



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

COMMISSION
CORRESPONDENCE

November 21, 1979

Mr. J. Dexter Peach, Director
Energy and Minerals Division
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Peach:

I very much appreciate the opportunity to comment on the draft report of the General Accounting Office on "Opportunities to Improve the Effectiveness of the Nuclear Regulatory Commission" enclosed with your letter of October 19, 1979. These comments are made on an individual basis and I have not discussed them with my colleagues. I understand that some of my colleagues may submit comments of their own.

I think it would be helpful in Chapter 1, especially in view of the nature of the GAO report as a report to the Congress, to note the change in oversight committee status that occurred almost two years after the NRC was formed. As I note later, I believe this circumstance may have had some effect on the nature of Commission activities in the earlier days of the agency.

In connection with the comments on NRC inspection and enforcement policies in Chapter 2, I think note should be taken of the Commission's request to Congress at the beginning of this year for higher civil penalty authority. With regard to whether or not NRC relies too much on the integrity of licensees, it must be recognized that NRC is unlikely to ever have the staff resources to conduct complete inspection activities at plants under construction so that a full independent assurance of adequate construction could be given. These are large plants and millions of man-hours go into them in the construction phase. The NRC audits the applicants' quality assurance programs to try to make sure that adequate quality construction programs are in place. I believe the vigor and effectiveness of the inspection program have increased substantially over the short life of the agency as more staff resources have been made available. With the implementation of the resident inspector program for both operating plants and plants under construction, I believe the NRC's inspection activity will reach a new high level of effectiveness.

With regard to the comments on comprehensive evaluations of operating experience and the need for off-site emergency preparedness in Chapter 2, I believe the Three Mile Island accident and the analyses of underlying causes and related matters that we have done since show the correctness of these comments. I believe that the recommendations in the GAO reports on these subjects are now being fully implemented.

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I was interested to note from the draft report that in October 1975 the NRC staff had presented a plan to the Commission for a coordinated national regulatory program for nuclear waste management. I was not, of course, in the government at that time and cannot speak to the reasons the Commissioners did not act on the plan. It may have been because the national waste disposal program is a primary responsibility of the Department of Energy and has taken several turns and twists in recent years. The Commissioners may have felt that a strong regulatory advance in one direction might turn out to be the wrong direction. In this regard, I would note that this section of the draft report somehow sounds as though the NRC had primary responsibility on the national level for waste management programs. I think it would be helpful if there was some indication that that is indeed not the case and some recognition of the fact that our own regulatory waste management programs have had to deal with a shifting target from the Executive Branch in this area.

You have had comments from the NRC staff on all of the sections of Chapter 2 of the draft report. I recommend them to your attention. In particular, I am in agreement with the staff comments on the sections on safeguards regulations and on controls on the research program.

In Chapter 3, dealing with the Commission itself and its principal officers, the draft report correctly notes the difficulties in providing aggressive leadership to an agency with the commission form of executive management. The benefits of the commission form come in having diverse views, perspectives, and backgrounds represented on a commission. To the extent that commissioners with different backgrounds and perspectives are chosen, it is more difficult for a commission to coalesce rapidly on particular positions and thereby to provide strong leadership to an agency. Obviously, a commission composed of people all agreeing on the general thrust that they would like to see an agency take can agree easily on policy matters and provide at least the appearance of a greater degree of leadership. But since the value of the commission form lies precisely in its ability to require different viewpoints to be compromised and accommodated in reaching policy decisions, then rapid decision-making is not likely to be a feature of a commission. That is not entirely a bad feature of commissions. In regulatory matters, whether in the safety area or in economic matters, a certain amount of care and deliberation in policy decisions is much to be preferred over hasty decision-making.

I have come after long consideration of the matter to the conclusion that nuclear regulation is best done by an independent agency headed by the Commission. In reaching that conclusion, however, I do not argue

with the assessment of the draft report that the Commission has failed to provide adequate leadership and management for nuclear regulatory activities. The Commission has failed to make decisions in some matters, has often taken much too long a time to reach decisions, and has a general tendency to spend time on administrative, personnel, and staff management matters that would be more effectively and rapidly dealt with by the Chairman and the Executive Director. The result is as portrayed in the draft report.

But these deficiencies are only in part attributable to the commission form of organization. In the NRC's case, they are more the result of the present uneasy balance in the understandings among Commissioners as to the prerogatives and reach of authority of the individual Commissioners. They can, and should, be cured by agreement among the Commissioners to implement the thrust of the 1975 amendment of the Atomic Energy Act on the powers of the Chairman. I would note that I believe the section of the draft report on this matter correctly reflects the situation to date.

The changes needed are clear and straightforward. First, the Commission should continue to deal on a collegial basis with all adjudicatory matters, rulemaking decisions, significant regulatory policy matters, and such other matters as a majority of the Commissioners want to consider. The collegial Commission should establish the basic policy, planning, and program guidance statements for the agency and should continue to review and approve the agency's budget proposals. Selection of the Executive Director, the five principal office directors, the Executive Legal Director, and the heads of Commission-level staff offices should be made by the collegial Commission. Commissioners should, of course, have complete control over their own office staff appointments. To assure timely working of the collegial decision process, Commissioners should agree to state their views or abstain from a decision within a reasonable time after a majority of Commissioners have reached agreement, provided that the majority wishes to go ahead with the decision.

Second, on all other matters the Chairman should manage the agency as the 1975 amendment provides by exercising the executive and administrative functions of the Commission with regard to personnel matters, the distribution of business among the officers and units of the agency, and the use and expenditure of funds. In doing so, the Chairman should act through the Executive Director to exercise management control over the staff and resources of the agency. The Chairman inevitably must spend substantial time on agency relations with other government agencies, the Congress, official visitors, and other matters. Effective management of

the agency staff requires the full-time attention of a single individual acting under the Chairman's general direction and exercising the Commission's full authority. The Executive Director is the obvious choice.

If implemented, these changes will cure a large part of the leadership and management deficiencies that are all too apparent in the agency, while preserving the major benefits for careful nuclear regulation that I see in the independent commission form of the agency. Under these changes the collegial Commission has authority and is accountable for the adjudicatory, rulemaking, and regulatory policy decisions of the agency. The Chairman, in turn, has authority and is accountable for implementing those decisions and managing the staff and resources of the agency, working through the Executive Director and the senior officers of the staff.

With regard to the role of the Executive Director, I should note that I agree fully with the assessment and recommendations for that office in the draft report. The Executive Director must have authority, under the Chairman, to direct the staff (excepting the Commission-level offices), including the heads of the statutory offices. There is no intent in this comment to deny the access to the Commissioners for the heads of the statutory offices provided in the Energy Reorganization Act of 1974. As a practical matter, every staff member has full and personal access to every Commissioner under the Commission's long-standing Open Door Policy. But that right of access must not be allowed to create any impression that the statutory offices are independent fiefdoms, to be operated without direction and control by the Executive Director. I must add that I believe there is much less tendency in this direction now than was the case in the early days of the NRC, but there remains a flavor of major office independence due to the unresolved differing views of Commissioners on the Executive Director's role. I should also note that the Commission is now working on a clarification of the Executive Director's role.

In the section on developing measurable goals, objectives, and evaluation systems, I think it would be helpful to note that last year the NRC commenced a trial use of the decision unit tracking system and had an early draft of a policy, planning, and program guidance document. The Commission is now engaged in establishing the policy, planning, and program guidance document as the fundamental goals and objectives guidance for the agency and is replacing the old management-by-objective document and its associated review system with the PPPG document. The evaluation system that goes with the PPPG system is the decision unit tracking system, and program review meetings of the staff are now based upon those decision units in the system. The decision unit tracking system provides an immediate tie to the agency budget and staff resource requests.

The draft report comments on the acceptance by the Commissioners in 1975 of the system of nuclear regulation that had been created under the AEC. I cannot comment on the basis of first-hand knowledge, but it seems to me likely that the new Commission, operating under the oversight of the Congressional Joint Committee on Atomic Energy, might have found that any substantial changes in the nuclear regulatory scheme would be difficult to make in view of that oversight. The Joint Committee had, after all, closely supervised the AEC and its regulatory activities for many years. I suspect that the Joint Committee members and staff would have looked askance at attempts by the newly-formed regulatory commission to strike out in new directions.

While I agree that the Commission needs to improve its policy-making activities, I think the draft report section on this matter underestimates the influence of Commissioners and the Commission on the staff with regard to the need for, timing, and direction of policy papers. Guidance to the staff from Commissioners is given in assorted ways besides the more formal communication to the staff from the Secretary on behalf of the Commission. Discussions at Commission meetings and individual comments and discussions between Commissioners and staff officers have played a substantial role in directing policy-making activities, at least in the time I have been on the Commission. These less formal routes of communication are not easily apparent to outside auditors, but are present and have effect.

The draft report recommends placing of policy-making activity in the Commission-level Office of Policy Evaluation. A strengthening of the OPE role in policy-making is appropriate, and is now included in a new definition of the OPE functions in preparation by the Commission. It must be recognized, however, that a full transfer of policy paper preparation to OPE is not practical. Only the line staff offices have the resources and the intimate familiarity with all phases of our regulatory practices to deal with the details of most policy papers.

In connection with the comments in the draft report on the Appeals Panel function and the possibility of the Commission itself assuming that function, it should be noted that most of the work of the Appeals Panel is in providing a thorough review of Licensing Board decisions for adequacy and for consistency with Commission regulations. The Appeals Panel is a highly professional group, devoted full-time and without other distractions to this work. I doubt the Commission could do the job as well as the Appeals Panel. What is needed is a better and more rapid way for policy issues arising in the adjudicative process to be referred to the Commission. In the aftermath of the Three Mile Island accident, the Commission has taken final license issuance into its own hands and has defined a process for early identification of issues that should be determined by the Commission.

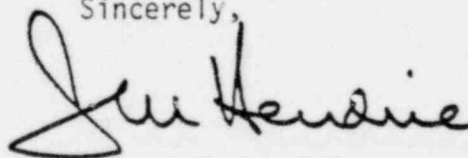
There are two matters not touched on in the draft report that I think are worth noting. One has to do with the actions of the Commission itself in emergency situations, a matter the Commission is now discussing. We find that as written, the statutes do not permit delegating the powers of the collegial Commission to the Chairman or any single Commissioner, even in an emergency when fast and decisive actions may be needed. It is, I think, another manifestation of the conflicting directives in the statutes between a Commission of totally equal individuals, able to take action only as a collegial group, and the 1975 amendment making the Chairman the chief executive officer of the agency. Whatever the Commission's final decision on its own role in an emergency, it seems to me preposterous that the Chairman or Acting Chairman cannot be delegated the Commission's full powers to issue orders to a licensee in an emergency. I think the statutes should be amended to allow that delegation.

The other matter concerns an increasing tendency of the Congress to require review and approval by the Commission itself of safety research contracts. The agency budget requests, and especially the research requests, are thoroughly reviewed by the staff offices, the Executive Director, and the Commission in forming the annual budget. To go beyond that review and require Commission approval of specific research contracts may be appropriate for very large contracts and major new research effort initiations. But requiring the personal attention of Commissioners to contracts as small as \$20,000, as is now the case in the safeguards research area, seems to me inconsistent with the strong thrust of the draft report, with which I agree, that the Commission should concentrate its attention and move more effectively on the significant policy issues before it.

Finally, I wish to record my full agreement with the recommendations to the Commission at the close of Chapter 3 of the draft report, subject only to the comment above about continued staff office involvement in the details of policy papers.

I want to thank you for the opportunity to comment on the draft report and for your helpfulness in discussing it with me and other members of the Commission and staff. I can assure you that your comments and recommendations will receive the most serious attention of the Commission and will be most helpful to us in improving the operation of the agency.

Sincerely,



Joseph M. Hendrie