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Congress of the United States

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November 21, 2013

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

Dear Chairman Macfarlane,

We commend the Commission for directing the staff to proceed with completion of the Yucca Mountain Safety Evaluation Report, a long-overdue action for which the Commission has stated it has adequate resources. However, the Commission's vote took place 97 days after the District of Columbia Circuit Court issued its Writ of Mandamus compelling the Nuclear Regulatory Commission to resume its consideration of the Yucca Mountain repository license application. The pace of the agency's decision-making has prompted questions concerning the agency's use of its staffing and resource, something we would like to understand more fully as we prepare for a hearing examining this and other issues on December 12, 2013.

The NRC's role in protecting public health and safety and the environment is a vital one: one that we strongly support and one that should be adequately funded. In 10 years, the NRC's annual budget has grown from $626 million to $985 million and its staff from 3,040 Full Time Equivalents (FTE) in fiscal year 2004[1] to 3,931 FTE[2] for fiscal year 2014. The staffing increase is at 29 percent and the appropriated funds, 90 percent of which are recovered by fees on licensees (and their customers), have increased by 58%.

We are aware that a portion of the NRC's budget increase was justified by the need to review the Yucca Mountain license application. Growth in the NRC's budget was also justified by the need to review new reactor applications at a time when licensees anticipated more than 20 new reactor licenses would be submitted. The NRC articulated

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[1] http://pbadupws.nrc.gov/docs/ML0423/ML042360006.pdf
[2] http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1350/

these factors in the agency's Congressional Budget Justification for Fiscal Year 2009[3], the first year the agency's request exceeded one billion dollars:

> *"This fiscal year (FY) 2009 budget request reflects an increase in the agency's regulatory activities, driven primarily by an anticipated interest in constructing new nuclear power facilities, oversight of existing reactors, and materials and waste licensing. The agency expects to review* ***21 uranium recovery applications****, which produce the raw materials for nuclear fuel, to receive* ***two applications for new facilities that will enrich uranium*** *to produce the nuclear fuel used in reactors, and to receive* ***an application from the Department of Energy (DOE) to construct and operate a geologic repository at Yucca Mountain in Nevada****. During FY 2008, the agency expects to initiate the* ***review of 14 Combined Operating Licenses (COL) applications****. During FY 2009, acceptance reviews are anticipated to be performed on* ***seven additional COLs.*** *Commencement of the reviews of these seven COL applications will occur within an 8-month timeframe following the acceptance of the applications.* ***It is the agency's responsibility to review the applications in a timely manner so that our licensees will be able to build and operate facilities that produce electricity needed for our Nation's economic growth.*** *To fund these license application reviews, as well as the many other activities necessary to meet the agency's mission, the agency requests $1.02 billion for FY 2009." (Emphasis added.)*

As you know, the NRC ceased the review of the Yucca Mountain license and has only recently voted to resume its work in keeping with the DC Circuit's mandamus decision.

NRC has accepted applications to build 28 new reactors. At this time, licenses have been issued for only four of those 28 new reactors. Applications for another 15 reactors have been suspended. That leaves applications for only nine reactors still undergoing review, one-third of the previous workload.

In 2004, the NRC oversaw 104 reactors. In the past year, licensees have announced decisions to prematurely close five reactors. By the end of 2014, only 99 reactors will be operating and additional reactors may close prematurely which would further decrease the agency's oversight workload.

In 2004, the NRC oversaw nearly 5,000[4] materials licensees. Today, that number is down to less than 3,000[5].

Despite this declining workload, the NRC's schedule discipline appears to be eroded. The NRC has delayed the schedules for all but one license review indicating:

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[3] NUREG -1100, Volume -24, February 2008

[4] http://pbadupws.nrc.gov/docs/ML0303/ML030380431.pdf

[5] http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1350/v25/facts-at-a-glance.pdf

"Recently imposed budget constraints have resulted in substantial impacts on licensing activities associated with combined license and early site permit applications."

Of the new plant license applications currently under review, six will have been pending for seven years or longer before being issued.

Since the Office of New Reactors was established in 2006, the NRC has failed to issue any new design certifications and has only issued one design amendment. Prior to establishing the Office of New Reactors, the NRC approved design certifications for four new, advanced reactors; the ABWR, the System 80+, the AP600, and the AP1000. The office is currently reviewing three new designs, two renewals, and one amendment. According to the NRC's current schedule, two of them will have been pending for over eight years and one for more than seven years before receiving certification.

We would expect to see any decrease in workload lead to more timely reviews but that does not appear to be the case here. While we heartily support the NRC's mission to protect public health and safety and the environment we feel compelled to ask: Is the NRC functioning as efficiently as it should and are its actions focused on matters that are safety significant?

We realize that part of the workload is the 56 ongoing rulemakings listed on Regulations.gov. This is in spite of the fact that the NRC's own assessment of long term trends in the safety of U.S. reactors[6] indicated *"the staff did not identify any statistically significant adverse trends in industry safety performance"*, showing that safety is *improving* in ten out of fourteen categories with no discernable trend in the remaining four categories. Furthermore, their assessment of short term trends *"...did not reveal any emerging trends that warranted additional analysis or significant adjustments to the nuclear reactor safety inspection or licensing programs."*

The agency continues to spend heavily on further safety enhancements based on lessons from the Fukushima accident, many of which we support. We are glad the NRC has repeatedly testified that U.S. reactors are safe and that work is well underway to make the safety enhancements that were prioritized as Tier One, the items considered most safety significant. However, as stated in the NRC's *Principles of Good Regulation: "Regulatory activities should be consistent with the degree of risk reduction they achieve."* As the NRC analyzes lower priority issues, the agency is struggling to justify further requirements as cost-beneficial, as we learned through our correspondence on the issue of filtered vents.

We hope to see nuclear energy continue to make a vital contribution to powering our nation's economy; contributing to energy security and providing thousands of jobs supporting families across the country. However, we are concerned about the Commission's inability to reconcile its declining workload and reduced number of

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[6] http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2013/2013-0038scy.pdf

licensees with its erosion of schedule discipline. These dynamics compound the challenges to the economic viability of existing nuclear plants and inhibit future new plant development.

In order to better understand the NRC's budget and the apparent disconnect between improving industry safety trends, the decline in agency workload, and the decline in the timeliness of reviews. Please respond to the following questions by December 5, 2013:

1. What steps is the agency taking to identify declining workloads and numbers of licensees and propose corresponding resource reductions?
2. What role does the Chairman's office play in the identification of declining trends in agency workloads?
3. How is the NRC redistributing its resources in light of the reduction in workload in some areas?
4. Please provide a schedule with the dates estimated for the release of each outstanding volume of the Yucca Mountain Safety Evaluation Report.
5. Please provide an estimate of the resources necessary to fully comply with the DC Circuit's mandamus decision, complete the review of the Yucca Mountain license application, and issue a decision regarding construction authorization as mandated in the Nuclear Waste Policy Act.
6. Has the NRC submitted a supplemental budget request to the Office of Management and Budget? If not, when do you expect to do so?
7. Please provide a list of the costs billed each year to each applicant for the review of license renewal applications for the past 10 years including ongoing reviews.
8. Please provide a list of the costs billed each year to each licensee for the review of new plant COL applications for the past 10 years including previously issued and ongoing reviews.
9. Please provide a list of the costs billed each year to each applicant for the review of new design certification applications, amendments, and renewals for the past 10 years including previously issued and ongoing reviews.
10. Please provide a copy of any "lessons learned" reports examining the NRC's performance in reviewing the first new plant licenses in over 30 years.
11. Please explain what actions the Commission is taking to address shortcomings in meeting performance metrics for reviewing power uprate requests. Please provide a list of the costs billed to each licensee for the review of power uprate requests for the past 10 years including ongoing reviews. Please provide a list of power uprate requests that have been withdrawn, including how long those requests were under consideration and the costs billed to each licensee.
12. Please provide a statement on what principles and factors will guide the Commission's FY '15 budget deliberations.
13. In what way does the Commission seek to ensure that the budget appropriately adheres to the NRC's *Principles of Good Regulation*?

If you have any questions or concerns, please contact Annie Caputo of the Majority Committee staff at 202-225-2927.

Sincerely,

Ed Whitfield
Chairman
Subcommittee on Energy and Power

John Shimkus
Chairman
Subcommittee on Environment and the Economy

Attachment

cc: The Honorable Fred Upton, Chairman

The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

The Honorable Paul Tonko, Ranking Member
Subcommittee on Environment and the Economy