

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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August 30, 2023

Mr. Jeffrey S. Merrifield
Chairman,
Advanced Reactor Task Force
U.S. Nuclear Industry Council
1317 F Street N.W., Suite 350
Washington, DC 20004

Dear Mr. Merrifield:

Thank you for appearing before the Subcommittee on Energy, Climate, and Grid Security on Tuesday, July 18, 2023, to testify at the hearing entitled “American Nuclear Energy Expansion: Updating Policies for Efficient, Predictable Licensing and Deployment.”

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Wednesday, September 13, 2023. Your responses should be mailed to Kaitlyn Peterson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to Kaitlyn.Peterson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Jeff Duncan
Chair
Subcommittee on Energy,
Climate, and Grid Security

cc: Rep. Diana DeGette, Ranking Member, Subcommittee on Energy, Climate, and Grid Security

Attachment

Attachment—Additional Questions for the Record

The Honorable Jeff Duncan

- 1. As a former Commissioner you probably have views on agency management and leadership. Concerns have been raised repeatedly about NRC licensing performance, the decline in licensing activity, the more costly reviews, the longer reviews. Many stakeholders talk about the failure of the Part 53 process to reflect what Congress intended. Please discuss what is necessary for leadership at the Commission to address these issues.**

Since I left the NRC almost 15 years ago, there has been an increasing tendency of the Commission to promote leadership from within the organization and a larger percentage of managers at the Commission have worked with the Agency for their entire careers. Previously, there was a higher percentage of individuals with experience from the Department of Energy, the U.S. Navy Naval Reactor Program, or who possessed experience from having worked in the nuclear industry. The result, in my personal view, is that there is a greater level of insularity within the NRC staff and management and an increasing lack of innovation and fresh thought. Two notable exceptions to this trend are Ray Furstenuw (formerly with DOE) the Director of the Office of Research, and Mirela Gavrilas (formerly at the University of Michigan), the Director of the Office of Nuclear Security and Incident Response, who have, in my view, brought experience from outside the Agency and who have provided innovative leadership efforts in the areas under their responsibility. Further, many of the senior leaders within the NRC leadership lack the kind of technical depth within the senior management ranks as we had when I was a commissioner. Due to this change, the current crop of senior NRC managers is less likely to challenge the recommendations made by lower-level staff that do not align with the Atomic Energy Act's requirement that the NRC regulations meet the reasonable assurance of adequate protection standards – but not more.

The recent experience with Part 53 is a direct example of this gap. The individuals at lower levels of the NRC organization put together a draft Part 53 rule which borrowed from other portions of the existing Part 50 and 52 processes and layered on additional requirements that were more stringent than existing rules. This effort was completely contrary to the notion of coming up with a risk informed rule that recognized the lower level of risk associated with the advanced reactor technologies that are being considered today. Instead, the draft Part 53 before the Commission would propose an increased number of requirements when compared with the existing light water fleet, rather than a reduced regulatory burden that reflects the lower risk presented by these technologies.

Another example of the challenges demonstrated by my point above is the management of the differing professional opinion (DPO) program of the NRC. I believe the DPO program is an important avenue to make sure that safety issues or concerns aren't ignored and that individual views about safety, as demonstrated by the Challenger accident, should be evaluated and dispositioned. Evaluating these concerns is a difficult balance because sometimes it results in the Agency changing its policies, or sometimes the individual raising the concern must be told that their views didn't prevail, and that the Agency is sticking with its position. This requires strong management and sometimes difficult conversations. Unfortunately, I believe the NRC DPO process has been abused by individual staff of the NRC who refuse to back down after they have been given an opportunity to go through the process. This has resulted in a chilling effect among NRC managers who are fearful of telling the NRC staff "no" and instead want to negotiate a more intermediate position to assuage their concerns. Compounded by a lack of technical acumen among this same cohort of managers, this results in unneeded regulatory ratcheting at the Agency and imposes additional, unnecessary and costly regulatory burden on the industry and other regulated entities. This process also has a tendency

to drag out Agency processes and is one of the reasons why Agency decisions have taken more and more time as the years go by.

To reverse these trends, the Commissioners must engage in leadership renewal within the Agency's management ranks. This should include making sure that every senior management position within the Agency is opened to outside competition and the Agency should set an explicit goal of making sure that they continue to identify senior staff who have experience outside of the Agency. Further, the Agency would benefit from creating a Chief Technical Officer position and they should identify and hire experts with various forms of technical expertise that that the Commission could call upon to ensure that the Agency's regulatory processes are not unnecessarily conservative.

2. As you reflect on the discussion at the hearing, please provide any additional comments you believe would be useful for improving the proposed legislation or our broader work to improve NRC licensing and oversight of existing and advanced reactors?

When I testified before the Committee, I did not have the opportunity to provide my detailed comments about [H.R. 4530](#), NRC Office of Public Engagement and Participation Act of 2023 (Rep. Levin).

While I appreciate and share the concern that the NRC can do a better job of engaging in two-way communication with the public as well as its licensees, I believe the current culture of the Agency, which has an overly broad view of what constitutes promotion, has unnecessarily limited the manner in which it engages with the public, including the type and breadth of information it provides to members of the public, and I am supportive of making changes that would improve this situation.

While well intended, I believe H.R. 4530 could cause unintended consequences that would not be beneficial to the public at large and could detract from the goal of efficient and timely licensing to enable nuclear power to meet the needs of addressing climate change.

The Office of Public Engagement, which is proposed in the bill, is similar to a structure that has been implemented at FERC and by some State Public Utility Commissions. An important distinction is that these institutions are economic regulators and hence every member of the public is directly affected by the decisions of this entity. In the case of this proposal, there may be only a small portion of the public who oppose these decisions and there is no nexus to location, standing, or a personal stake in the licensing decision to be funded by the advocate. Nor is there any nexus to public participation that furthers the goals of the NRC by actually improving public health and safety.

The legislation, as proposed, would create a new Office, equal in standing to the Office of Nuclear Reactor Regulation, but with a mandate to assist in submitting contentions and hearing requests, which are ultimately a challenge to the NRC Staff licensing process. These contentions, could then be funded by taxpayer dollars which would result in the NRC Staff using taxpayer dollars to come up with new and creative ways to legally challenge the NRC's own licensing decisions, potentially delaying those decisions in the process.

Additionally, besides the Commissioners and the NRC Inspector General, no other management official in the Agency has a fixed term or such high standards preventing removal. As a former Commissioner, I believe the Commission needs the flexibility to remove or reassign any manager to address agency needs, gaps in capabilities or lack of performance. The individual in this role should be no exception.

In my view, to meet the worthwhile goal of increasing public participation and awareness of the Agency's process, I would suggest the following steps:

- I would strongly recommend improving and enhancing the Adams Electronic system at the Agency. Enabling greater public access to NRC files would be of great value in allowing the public to better understand and engage with the Agency decisions.
- Modify the Nuclear Energy Innovation and Modernization Act to include a definition for "public engagement" and require the NRC to capture this within its Rules and Guidance.
- Take Public Engagement Activities off the Fee Base to eliminate the existing disincentive for the Agency to undertake broader stakeholder engagement activities.
- Require the NRC staff to actively "engage" and answer public questions and require the hiring and training of additional staff facilitators who could more effectively achieve this goal. The Agency should not shy away from providing informative documentation and presentations that would explain the technologies, subject to the Agency's regulations, to provide a better basis for members of the public to educate themselves and engage in dialog with the Agency.

3. I'd like to help restore an NRC culture of achievement that, of course, assures adequate safety for the public but with a broader measure on the benefits of nuclear.

a. What potential legislative or oversight actions might we consider helping develop at NRC a culture of achievement, in keeping with the Atomic Energy Act goals?

When I was an NRC Commissioner, we had a very good appreciation for the balance created within the Atomic Energy Act and the Energy Reorganization Act in which the Agency should regulate these technologies to provide reasonable assurance of adequate protection of public health and safety, but conducted in a manner which would enable these beneficial technologies to be deployed. Since I left, I believe the Agency has become increasingly conservative in engaging in any activities that could be even remotely perceived to be promotional. This has resulted in increased insularity, the inability to adequately engage with the public and regulated licensees and, frankly, erosion in the confidence of the Agency's decisions. To me, the Agency can engage in a more forward-leaning manner to explain and educate the public about these technologies without endangering their regulatory independence on specific regulatory decisions or actions.

Whether through additional legislation, or further oversight hearings, I think Congress needs to remind the Commission and its senior staff that they need to remember the balance I described in the pervious paragraph and recognize the intention, as captured in the Atomic Energy Act, that these technologies should be licensed in a manner that imposes only that level of regulation needed to meet the reasonable assurance of adequate protection standard and enables these technologies to be promptly deployed for beneficial public use.

The Honorable Rick W. Allen

- 1. The discussion draft for the Nuclear Licensing Efficient Act includes a provision that would amend the Nuclear Energy Innovation and Modernization Act (NEIMA) to require the NRC to review, assess, and revise, as appropriate, licensing performance metrics and milestone schedules required under the NEIMA to provide the most efficient performance metrics and milestone schedules reasonably achievable.**

a. Could you each explain what implications this could have for the industry, and how this goal of providing the most efficient performance metrics and milestone schedules could best be achieved?

I believe there is a tendency for the Commission management to use the “NRC Principles of Good Regulation” as an overarching yardstick to measure whether their regulatory activities are appropriate and useful. When I was on the Commission, we continually challenged our staff to review regulations, not only to ensure that there were no regulatory gaps, but also to identify areas where unnecessary regulatory burdens could be reduced, and regulations slimmed down where they did not make sense from the standpoint of the reasonable assurance of adequate protection standard. From all appearances, this philosophy is no longer embraced by the Commission or the senior staff and therefore there appears to be a one-way ratchet on regulatory actions.

During my time on the Commission, we operated with the principle that the NRC’s regulatory actions should be effective, efficient and timely in order to avoid imposing unnecessary regulatory burden. We also had a strong reporting culture and were required by Congress to provide succinct, graphical reporting documents with appropriate metrics to make sure we had a transparent way for the Commission to supervise, manage and adjust licensing activities to meet pre-determined milestones and Congressional expectations.

Today, the Agency does not fully embrace the mindset that its regulatory actions should be effective, efficient and timely, and I believe that the identification of appropriate evaluative performance metrics and milestone schedules should be imposed, with the appropriate input of Congress, to make sure that the Agency can meet these goals and expectations. When I was a Commissioner, we made the commitment to complete license renewal reviews within an 18-month period and new reactor licensing reviews within 36 months. This required significant effort by the Commission and its staff, but we managed the Agency actions in an effective manner to meet these goals and it proved to be a vital tool in making sure the Agency could be held accountable.