

House Energy and Commerce Committee Hearing
Subcommittee on Energy and Power
and the
Subcommittee on Environment and the Economy
July 24, 2012

Follow-Up Questions for Written Submission

The Honorable John Shimkus

- QUESTION 1.** **The NRC has repeatedly indicated that U.S. nuclear plants are safe and do not pose an imminent risk to public health and safety and has issued orders on the matters with the highest safety benefit. With that assurance and those actions in mind, please respond to the following:**
- a. Do you anticipate supporting any additional orders for post-Fukushima regulatory changes without requiring cost-benefit analysis?**
 - b. Please list any reasons you believe might warrant sidestepping the NRC's usual processes for developing a technical basis and cost benefit analysis when considering additional post Fukushima regulatory changes.**

ANSWER.

- a. The Commission intends to follow its established processes with regard to any potential additional orders related to post-Fukushima lessons learned. In accordance with these processes, cost-benefit analyses would be conducted where applicable and required. The agency's "backfitting" rule requires that an analysis be performed to determine if

proposed regulatory actions that constitute backfits under this rule are cost-justified, except in three cases: 1) if the action is necessary to bring a facility into compliance with a license or rules of the Commission; 2) if the action is necessary to ensure adequate protection of the health and safety of the public; or 3) if the action defines or redefines what level of protection should be regarded as adequate. Should one of these exceptions be invoked, then a documented evaluation must be completed. Furthermore, the Atomic Energy Act provides the Commission authority to issue requirements that it determines represent a significant enhancement to public health and safety. It is within this existing context of the NRC's established rules, processes, and statutory authority that the Commission would justify any future decisions regarding additional post-Fukushima regulatory requirements.

- b. As discussed in the response to Question 1a, the NRC's established processes for promulgating regulatory changes include the development of an analysis that weighs the costs and benefits of a proposed regulatory action that constitutes a backfit under the NRC's backfitting rule, unless one of three exceptions apply. These three exceptions are included within the NRC's established processes, and require a documented evaluation when invoked. The Commission also has authority to establish implementing requirements that significantly enhance public health and safety. The Commission is committed to considering all required and appropriate analyses, evaluations, and authorities available to it when deciding on any proposed regulatory action. In this decision-making process, the Commission remains focused on the health and safety of the American people.

QUESTION 2.

In March of 2011, the NRC staff developed a proposal to address situations where new NRC requirements might hinder the implementation of other recent NRC requirements. Regulatory changes should be prioritized based on safety benefit, and recognize timing, staffing, financial, and other constraints. This would certainly be in line with the NRC's Efficiency Principle which states: "Regulatory activities should be consistent with the degree of risk reduction they achieve." In the hearing, Commissioner Magwood was quoted as saying: "it does not, as a general matter, advance the cause of safety to inundate licensee staff with multiple actions when a more thoughtful process might achieve the agency's safety goals without straining licensee resources."

- a. What are your views on whether staff and industry concerns on potential cumulative effects of multiple new requirements have merit?
- b. Will you work with your colleagues and staff to ensure this matter receives serious Commission attention?
- c. Given the scope of Tier 2 and Tier 3 post-Fukushima actions and other regulatory changes under development, what actions are being taken to resolve this concern concurrently?

ANSWER.

- a. As discussed in the NRC paper “Consideration of the Cumulative Effects of Regulation in the Rulemaking Process,” the staff and industry concerns on potential cumulative effects of multiple new requirements do have merit.¹ The NRC has developed the following working definition for the cumulative effects of regulation:

Cumulative Effects of Regulation describes the challenges that licensees, or other impacted entities such as State partners, face while implementing new regulatory positions, programs, or requirements (e.g., rules, generic letters, backfits, inspections). Cumulative Effects of Regulation is an organizational effectiveness challenge that results from a licensee or impacted entity implementing a number of complex regulatory positions, programs, or requirements within a limited implementation period and with available resources (which may include limited available expertise to address a specific issue).

Cumulative Effects of Regulation can potentially distract licensee or entity staff from executing other primary duties that ensure safety or security.

The NRC has implemented a number of regulatory process enhancements to address Cumulative-Effect-of-Regulation issues. However, since safety and security must remain paramount in all regulatory decision-making, process enhancements focus more on scheduling implementation deadlines for the execution of requirements, and less on reducing or scaling back requirements. These process enhancements align with both the Executive Branch’s Open Government initiative and the January 18, 2011, Executive Order, “Improving Regulation and Regulatory Review.” The NRC staff will provide a paper in

¹ SECY-11-0032, March 2, 2011; ADAMS Accession No. ML110190027

October 2012 that builds upon SECY-11-0032 and also incorporates direction received from the Commission.

- b. The Commission has given considerable attention to this matter. With an expected staff paper due in October, we will continue to do so.
- c. SECY-11-0032 referenced in the answer to Question 2(a), notes that the NRC staff is considering the cumulative effects of regulation (CER) in the rulemaking process. If the Tier 2 and Tier 3 activities result in rulemaking, the CER process enhancements described in SECY-11-0032 will be directly applied.

For those Tier 2 and Tier 3 activities that are other regulatory actions (i.e., other than rulemakings), the CER will be considered indirectly. In other words, those regulatory actions will be considered to the extent they impact the implementation of ongoing rulemakings. For example, proposed rules will contain specific requests for comment on items related to CER. One such request will seek feedback from external stakeholders on whether any other regulatory actions (e.g., generic letters, orders, etc.) would influence the implementation of the proposed rule's requirements. The NRC staff will use that feedback to inform the implementation dates of the final rule requirements.

In addition, in many cases the staff will conduct a public meeting on implementation during the final rulemaking stage. During this meeting, external stakeholders will have another opportunity to inform the NRC of ongoing regulatory actions, and challenges those actions may create for the implementation of the subject final rule. Again, the NRC notes that safety and security concerns remain the most important decision factors.

Although CER does not directly apply to non-rulemaking activities, the NRC notes that many of the good regulatory principles emphasized in the CER process enhancements, especially extensive stakeholder interaction, are currently being applied in post-Fukushima activities.

QUESTION 3. **The Reorganization Plan of 1980 states that the NRC chairman "shall be governed by the general policies of the Commission." As Chairman, will you respect and adhere to the general policies of the Commission, as embodied by the Internal Commission Procedures?**

ANSWER.

I will adhere to Internal Commission Procedures, as has been the practice since the beginning of my Chairmanship.

QUESTION 4. **Please describe any changes to Internal Commission Procedures that you believe would be helpful:**

- a. In preserving Commission collegiality;
- b. In ensuring the timely and unfiltered flow of information to the Commission;
- c. To provide clarity regarding leadership and management during an emergency particularly with regard to the Chairman's use of emergency powers under Section 3 of the Reorganization Plan of 1980.

ANSWER.

- a. I am satisfied that the Internal Commission Procedures provide an effective framework for the Commission to govern as a collegial body.
- b. I am satisfied that the Internal Commission Procedures provide an effective framework for ensuring the timely and unfiltered flow of information to the Commission.
- c. I am satisfied that the Internal Commission Procedures provide sufficient clarity regarding leadership and management during an emergency, particularly with regard to the Chairman's use of emergency powers under Section 3 of the Reorganization Plan of 1980.

QUESTION 5.

The previous chairman repeatedly attempted to withhold or modify information provided to the Commission by the staff, even attempting to fire the Executive Director for having provided recommendations to the Commission. Please respond to the following questions:

- a. Will you refrain from using your authority for agenda planning to preclude or delay issues from coming before the Commission?**
- b. Will you refrain from altering information provided by the staff to the Commission?**
- c. Will you refrain from substituting your views for the staff's recommendations in information provided to the Commission?**
- d. Will you communicate to NRC staff your commitment to support their ability to communicate with the Commission and provide their best professional advice?**

ANSWER.

Much of my July 24, 2012 testimony before the Committee was directed at addressing these matters. My approach to management and to working with my Commission colleagues is to operate in a collaborative and collegial manner, always reaching out to others for input and ideas. Toward this end, I am meeting regularly with my Commissioner colleagues to seek their thoughts on major issues facing the agency and to benefit from their expertise. I look forward to continuing to forge a collegial relationship with them. I have also had the opportunity to work closely with the Executive Director and his direct staff. I have met with, been briefed by, and engaged a wide variety of the dedicated staff at the NRC through walk-arounds, meetings with various offices, and in written communications.

In this overall context, let me reiterate the commitment I made to you at our July hearing: I will devote my energies to serving the NRC with the attributes that I consider important to good governance – openness, efficiency, and transparency. I will practice collegiality at all levels. An agency endowed with the public trust to be protective of its safety and security, such as the NRC, requires a respectful working environment to assure its integrity. As Chairman, I am committed to ensuring that the Commission operates in an environment of collegiality, where information is fully and currently shared, and the work of the Commission and its agenda is collaboratively established and executed.

QUESTION 6.

There have been an extraordinary number of delays in the time it has taken to bring certain matters before the Commission to a vote and to closure, and Commissioners have not always abided by voting procedures. The Office of the Secretary has a critical role in coordinating the

Commission's voting in accordance with Commission procedures.

a. Will you adhere to voting procedures in the Internal Commission Procedures or work collegially to address needed changes?

b. Will you refrain from interfering in the Secretary's execution of her responsibilities to the Commission?

ANSWER.

I will devote my energies to serving the NRC with the attributes that I consider important to good governance – openness, efficiency, and transparency. I will practice collegiality at all levels, including with the Executive Director and Secretary. An agency endowed with the public trust to be protective of its safety and security, such as the NRC, requires a respectful working environment to assure its integrity. As Chairman, I am obligated and committed to do all within my authorities to ensure that the Commission operates in an environment of collegiality, where information is fully and currently shared, and the work of the Commission and its agenda is collaboratively established and executed. As the principle executive officer, serving on behalf of the Commission, I will assure that the Commission's staff, including the Secretary, and the Executive Director and NRC staff are treated with the respect due them and their important responsibilities.

QUESTION 7.

Following the Fukushima disaster, there was significant confusion regarding former Chairman Jaczko's use of emergency authority. Please respond to the following questions:

a. As Chairman, will you commit to immediately and publicly announce your exercise of emergency authority under Section 3 of the Reorganization Plan of 1980, should you decide to exercise it?

b. As Chairman, how would you expect to utilize the expertise of your fellow commissioners in an emergency situation?

c. As Chairman, will you commit to file a timely and fulsome report, as required in Section 3 of the 1980 Reorganization Plan, describing any unilateral actions taken during your exercise of that such authority?

ANSWER.

The Chairman's emergency powers are specified under Section 3 of the Reorganization Plan of 1980 and are captured in the following sections:

- Section 3(a) of Reorganization Plan No. 1 of 1980 (Reorganization Plan) reserves to the Chairman the function of "declaring" an emergency. Such a declaration causes the transfer to the Chairman all functions vested in the Commission that pertain to an emergency concerning a particular facility or materials licensed or regulated by the Commission, including the functions of declaring, responding, issuing orders, determining specific policies, advising civil authorities, and the public, directing, and coordinating actions relative to such emergency incident.
- Section 3(b) provides that the Chairman can delegate the authority to perform emergency functions, in whole or in part, to any members of the Commission, or in whole or in part to the staff of the Commission.

- Section 3(c) provides that the Chairman or anyone acting under delegated authority under section (b) shall conform to the policy guidelines of the Commission. This section also provides that to the maximum extent possible under the emergency conditions, the Chairman or other member of the Commission delegated authority under section (b) shall inform the Commission of the actions taken relative to the emergency.

As I understand these matters, the only time the exercise of emergency authority is needed is if the situation demands that I eclipse a function that is ordinarily reserved to the Commission. For example, if I am exercising my authority to serve as the Agency spokesman, or performing executive functions involving supervision of the staff, or deciding matters that don't involve policy formation, I would not invoke emergency authorities. If the need arises, however, to carry out emergency functions, I will do so in accordance with both the letter and spirit of the Commission's established internal procedures. As Chairman, I am obligated and committed to do all within my authorities to ensure that the Commission operates in an environment of collegiality, where information is fully and currently shared, and the expertise and good judgment of colleagues is sought to the greatest extent the exigencies of the emergency permits.

QUESTION 8.

Do you believe that the mission of the Office of Public Affairs (OPA) is solely to serve the Chairman's needs as spokesperson for the agency or do you believe OPA should more broadly serve the agency and reflect the Commission's position? How do you envision managing OPA in executing their mission?

ANSWER.

As specified in the Internal Commission Procedures, “the Chairman is the official spokesman for the Commission and appoints, supervises, and removes, without further action by the Commission, the Directors and staff of the Office of Public Affairs....” As the official spokesman for the Commission, I am committed to ensuring that I accurately convey the duly established policy positions of the Commission and that the Office of Public Affairs does the same. Furthermore, the Office of Public Affairs under my direction is not only serving my needs as the official spokesman, but the needs of the Commission as a whole. Certainly, the Office of Public Affairs will in all respects serve the important mission of our agency and will not -- in any respect -- be directed to serve my individual purposes.

QUESTION 9.

Please share your opinion regarding the benefits and transparency of the notation voting process.

ANSWER.

The notation voting process facilitates thorough Commission consideration of complex and technical regulatory issues. The process ensures that Commissioners have sufficient opportunity to consult with their personal staff, or other NRC staff, before the Commission reaches a final decision. The process preserves written records of the Commission’s deliberations, and, in many cases, yields published Commission voting records, which provide each Commissioner’s reasoning behind his or her vote. This approach under the Government in the Sunshine Act is at least as valuable for promoting transparency and insight into decision making as would a meeting-centered approach. With that said, meetings, including public Commission meetings, have played and will continue to play an important role in the Commission’s operations as a collegial body.

QUESTION 10.

For the last three years, the Commission and the agency have struggled with turmoil resulting from failed leadership.

Please provide your personal suggestions for legislation to reform its governance structure and strengthen the Commission's function as a collegial body.

ANSWER.

Taking the long view, and accounting for the full history of the Commission's work, I am satisfied that existing legislation, in combination with Internal Commission Procedures, provides an effective framework for the Commission to govern as a collegial body.

The Honorable Bill Cassidy

QUESTION 1.

Chairman Macfarlane, in the past you have stated opposition to the development and use of Yucca Mountain as a nuclear waste repository. Do you still stand by those comments and oppose the use of Yucca Mountain, as per your previous statements?

ANSWER:

As an academic and scientist I have published papers, articles, and an edited book that addressed the scope and findings of research completed on the geology of the Yucca Mountain site. My focus at the time was in highlighting the complexities and sources of uncertainty in the federal government's scientific analysis. Much of my research and analyses, particularly for my contribution for the book *Uncertainty Underground*, was done in the pre-2004 time frame. In this context, I wrote in the closing chapter of the book that "I am not trying to suggest abandoning Yucca Mountain and going back to the drawing board. Instead, I would like to put forth some ideas for improving the current situation based on this analysis....Hence, there is considerable time to reconsider whether Yucca Mountain is a reasonable site for the long-term storage of nuclear waste. There is little to be gained, and much to be lost, from rushing a decision of such magnitude." (pp. 406-408, Macfarlane, 2006)

I have not undertaken additional research on this matter since the publication of my book. The Department of Energy's license application seeking authorization to build a geologic repository at Yucca Mountain was not submitted until June, 2008. I have read neither the Department of Energy's license application, nor the Nuclear Regulatory Commission's technical analysis of that application. I would need to read both, as well as any additional relevant scientific literature, to

update my understanding of the suitability of Yucca Mountain for high-level nuclear waste disposal and before taking any action in my role as Chairman of the NRC.

The Commission is waiting for necessary direction and clarification from the U.S. Congress or the U.S. judiciary on these matters. In the eventuality that such direction is received, I will fulfill my responsibilities as Chairman and Commissioner and follow the Commission's established internal procedures for addressing these matters.

QUESTION 2. **If you oppose the development of Yucca Mountain, do you also oppose the expansion of nuclear energy in general?**

ANSWER:

I have not taken a position regarding the development of Yucca Mountain. I do not oppose the expansion of nuclear energy.

QUESTION 3. **Do you commit to allowing normal Commission process to be followed in making the final determinations on the Yucca Mountain issue; as opposed to what former Chairman Jaczko did, essentially subverting this process as he pursued his own agenda?**

ANSWER.

As in all my efforts as Chairman of the Nuclear Regulatory Commission, I will conduct my work with professional integrity, transparency of motive and judgment, and in conformance with both the letter and spirit of the Commission's internal procedures.

QUESTION 4.

If you continue to oppose the use of Yucca Mountain for scientific or other reasons, can you please detail your reasons so that I may better understand your opposition?

ANSWER.

Please see my response to Question 1.