



REQUEST REPLY BY: 5/3/07

COMDEK-07-0001 /  
COMJSM-07-0001

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

April 18, 2007

*Disapprove / Approve*  
*See attached comments.*  
*E. M. Gaffigan 5/24/07*

MEMORANDUM TO: *✓* Commissioner McGaffigan  
Commissioner Jaczko  
Commissioner Lyons

FROM: Chairman Klein  
Commissioner Merrifield

SUBJECT: REPORT OF THE COMBINED LICENSE REVIEW  
TASK FORCE

After discussions during the fall of 2006 regarding enhancement of the NRC's environmental, technical, and adjudicatory reviews of new reactor applications, we agreed that Commissioner Merrifield would lead a task force to explore further efficiencies in the new reactor license review process while maintaining a paramount focus on safety. The NRC staff currently estimates it will take approximately 42 months to complete the review of a combined license application that references a certified design. This schedule includes 30 months for technical and environmental reviews that result in the issuance of a final safety evaluation report and a final environmental impact statement. In addition, the schedule includes 12 months for adjudicatory proceedings following completion of the technical and environmental reviews.

The task force has completed its review effort and has provided the attached report containing its findings and recommendations. We urge the Commission to direct the staff to expeditiously implement Recommendations 1 through 6, as described in the Executive Summary, in order to realize the identified schedule efficiencies for combined license application reviews expected to begin in the 4<sup>th</sup> quarter of calendar year 2007. In addition, we recommend that the Commission direct the staff to facilitate implementation of additional Recommendations 1 and 2 for further efficiencies in the review of license applications submitted after the initial wave of applications expected in late 2007 and early 2008. Finally, we recommend the Commission direct the staff to investigate the areas needing further consideration, as discussed in Enclosure 4, and report back to the Commission on their investigation results and plans for implementation.

We urge our fellow Commissioners to act expeditiously on these recommendations such that their implementation can effect further efficiencies in the staff's combined license review process.

We will work with Loren Plisco, the Executive Director of the Task Force, to schedule a briefing for the Commissioners Technical Assistants on the review efforts, findings, and recommendations included in the report.

SECY, please track.

cc: L. Reyes, EDO  
K. Cyr, OGC  
A. Vietti-Cook, SECY

Commissioner McGaffigan's Comments on COMDEK-07-0001/COMJSM-07-0001

I appreciate Commissioner Merrifield's efforts to lead the Combined License Review Task Force. I think there are several good recommendations in the report, which I will endorse below. But I oppose several of the more ambitious recommendations.

The central issue for me is the mandatory hearing requirement. I am entirely in agreement that this is an obsolete statutory requirement for all the reasons given in the report. I support proposing legislation to amend Section 189a., Section 185, and Section 193 of the Atomic Energy Act to delete the mandatory hearing requirements. It is never good law to solve the same problem in multiple ways; whether in procurement policy, personnel policy, or in this case, policy for an administrative process. Doing so always leads to inefficiency without comparable benefit.

I suspect that we will have great difficulty in the current Congress passing such legislation. However, over time that could change depending on what happens in the licensing of new plants and depending on election results, if this proposal remains part of future Commissions' legislative goals. The case for reform will either build or evaporate over time. We have completed four mandatory hearings through an Atomic Safety and Licensing Board panel in recent years. For the Louisiana Energy Services (LES) hearing, the mandatory and contested parts were completed essentially simultaneously. In other cases, where no contentions were admitted, the mandatory hearings significantly extended time to completion.

My guess is that for the initial round of Combined Operating License (COL) applications, intervenors will be successful in drafting admissible contentions. So our goal might be to try to follow the LES model and complete the mandatory and contested hearings as simultaneously as possible. I have confidence that the Boards can handle the mandatory hearing in such circumstances far more efficiently than the Commission itself. Further guidance could be provided to the Boards on Commission expectations for their mandatory review. For example, given the deep look which Advisory Committee on Reactor Safety (ACRS) will give to the safety evaluation report (SER), the Boards may want to focus more on Environmental Impact Statement issues in its review. SER issues would only be dealt with if there were differences among ACRS members and/or within the staff on such matters. With the design-centered approach, such issues are highly unlikely after the lead application for each new reactor design.

I will complete my vote using the format other Commissioners have used in theirs, following the task force recommendations in the order proposed. I do not believe the paper or voting record should be public because of the ubiquitous presence of attorney-client privileged information. But I agree with Commissioner Jaczko that the agency should discuss with the public the changes which win majority approval in the Staff Requirements Memorandum on this paper.

With regard to the Task Force recommendation 1, addressing adjudicatory reviews, I do not approve the proposed modification that would revise 10 CFR 2.104 to reflect that contested hearings for a combined license would negate the need for an uncontested hearing. A novel theory propounded at this time would kill any chance of Congressional support for NRC's legislative proposal and could well result in legislation blocking the Commission's proposed rule change. Furthermore, as I said above, I believe that it would be a mistake for the Commission

to handle hearings on uncontested issues, taking this function away from our Boards. I question just how quickly and efficiently the Commission would be able to handle these hearings given the significant and likely growing volume of business that the Commission must tackle. The Commission's time is better spent on providing oversight and guidance to its Boards on these matters.

I fully support recommendation 2, expanding the scope and duration of the acceptance review assessing completeness of COL applications and to also include a modified technical sufficiency review that will inform the staff's review efforts and allow for the creation of schedules that can be tailored to a specific application.

I disapprove recommendation 3. Recommendation 3 would establish a 45-day public comment period for the Environmental Scoping Process and the draft Environmental Impact Statement. I do approve of this reduction in time. The additional time spent in scoping and at the draft EIS stage is a valuable opportunity to smoke out potential problems early in the process, allowing sufficient time to make corrections or address concerns. This builds in its own efficiencies into the overall NEPA process. To shorten the time to 45 days would simply lead to more extension requests and potential intervention further down the road.

I approve of recommendation 4, that the staff should seek additional opportunities to use EISs completed by other governmental agencies in its combined license review activities. I doubt this will add much efficiency, however. It will be up to the applicant to point out any relevant EIS's from other Federal agencies.

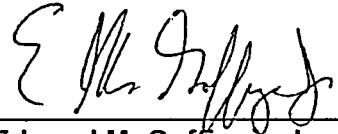
I agree with some of Commissioner Jaczko's concerns on recommendation 5. It is premature to devote the time and resources necessary for the creation of an Environmental Working Group at this time. We are too dependent on contractor resources for the EIS process at this time. A better use of staff resources would be to beef up staff management and oversight of these national lab contractors.

I approve recommendation 6, maximizing use of electronic document management to build in scheduling efficiencies, eliminating the processing time for bound reports. We should be doing that on all licensing activities of the agency, not just COL applications.

I have addressed the first additional recommendation on seeking legislation to repeal mandatory hearing requirements in my opening comments. I support doing so, however long the odds are against us.

I also approve of the Task Force's additional recommendation to consider rulemakings to resolve generic issues such as non-proliferation, need for power, etc. That general approach clearly helped in the license renewal process. One area that was not included in the Task Force's report, but which I believe requires attention, is waste confidence. I believe it is time for the Commission to again reexamine the bases for its waste confidence determinations. It strikes me that OGC could handle many of these rules with minimal staff support. That would speed the rulemaking process enormously given past history.

With regard to the five areas needing further consideration, I approve of the staff investigating additional improvements for the new reactor license review process, although this might be better delayed until we have actual experience. The staff should also investigate how the schedule duration for the environmental scoping phase might be improved for applicants referencing an early site permit or a new plant site that is co-located with an existing nuclear plant. As I wrote above, I fully support examining re-establishing environmental expertise on the staff, reducing contractor reliance. I agree that the ACRS should also pursue efficiencies in a more focused review of COL's by adopting a "delta" review approach but only after the completion of the first COL of each design type. Finally, I approve of the staff's plans to provide external stakeholders with information on the New Reactor Licensing Program Plan, soliciting additional recommendation on improvements to the new reactor licensing review process. This would be a natural part of discussing with the public the changes approved in the SRM for this paper, which itself should remain non-public as I noted above.



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Edward McGaffigan, Jr.

5/24/07

(Date)



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Approved/  
Disapproved. See attached comments.

April 18, 2007

Gregory B. Jaczko

4/27/07  
Date

MEMORANDUM TO: Commissioner McGaffigan  
~~Commissioner Jaczko~~  
Commissioner Lyons

FROM: Chairman Klein  
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SUBJECT: REPORT OF THE COMBINED LICENSE REVIEW  
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After discussions during the fall of 2006 regarding enhancement of the NRC's environmental, technical, and adjudicatory reviews of new reactor applications, we agreed that Commissioner Merrifield would lead a task force to explore further efficiencies in the new reactor license review process while maintaining a paramount focus on safety. The NRC staff currently estimates it will take approximately 42 months to complete the review of a combined license application that references a certified design. This schedule includes 30 months for technical and environmental reviews that result in the issuance of a final safety evaluation report and a final environmental impact statement. In addition, the schedule includes 12 months for adjudicatory proceedings following completion of the technical and environmental reviews.

The task force has completed its review effort and has provided the attached report containing its findings and recommendations. We urge the Commission to direct the staff to expeditiously implement Recommendations 1 through 6, as described in the Executive Summary, in order to realize the identified schedule efficiencies for combined license application reviews expected to begin in the 4<sup>th</sup> quarter of calendar year 2007. In addition, we recommend that the Commission direct the staff to facilitate implementation of additional Recommendations 1 and 2 for further efficiencies in the review of license applications submitted after the initial wave of applications expected in late 2007 and early 2008. Finally, we recommend the Commission direct the staff to investigate the areas needing further consideration, as discussed in Enclosure 4, and report back to the Commission on their investigation results and plans for implementation.

We urge our fellow Commissioners to act expeditiously on these recommendations such that their implementation can effect further efficiencies in the staff's combined license review process.

We will work with Loren Plisco, the Executive Director of the Task Force, to schedule a briefing for the Commissioners Technical Assistants on the review efforts, findings, and recommendations included in the report.

SECY, please track.

cc: L. Reyes, EDO  
K. Cyr, OGC  
A. Vietti-Cook, SECY

**Commissioner Jaczko's Comments on COMJSM-07-0001/COMDEK-07-0001  
Report of the Combined License Review Task Force**

I approve in part and disapprove in part the Report of the Combined License Review Task Force. I believe there are some recommendations in this Report that will make quality improvements in our new reactor licensing process. Overall, however, I do not believe the agency is yet at a point to meaningfully evaluate the new reactor licensing process when that process has yet to be used. As the task force itself recognized, "although the NRC can and will utilize the experience gained in exercising the early site permit and design certification processes, there are inherent limitations associated with identifying process improvements and realizing the expected efficiencies from their implementation on an untested process." This effort would, perhaps, be more constructive after the anticipated first wave of new reactor license applications rather than before it.

Moreover, I do not believe the agency should put into practice recommendations regarding process improvements in the area of combined licenses without a full and complete public vetting of the ideas. I recognize the staff's tremendous knowledge in this area, but I would be particularly interested in whether the agency's external stakeholders view the agency's processes and perceived efficiencies in the same manner. One need only look at recent examples, such as tritium leaks and the call for independent safety assessments at Indian Point, to recognize that issues that may not be risk significant, nonetheless, often cost the agency a vast amount of time and resources. While the task force engaged internal and external stakeholders, it is difficult to ascertain what, if any, impact their comments had on the final recommendations. Thus, I support public availability of this Report and support the staff engaging stakeholders in discussions regarding potential process improvements in the future. This effort, however, should be given a low priority because it would result in inefficiencies if the staff's substantive review of applications is interrupted in order for the staff to, instead, search for improvements to the review process.

Regarding the specific recommendations, I strongly support recommendation no. 2, expanding the scope and duration of the acceptance review for a combined license application. Although discussions surrounding improvements to the NRC's processes often emphasize a search for efficiency, I believe what everyone is truly seeking is, instead, predictability. As was discussed during the recent Commission Briefing from the Office of New Reactors and as I mentioned in my testimony during the recent Hearing before the Senate Environment and Public Works' Subcommittee on Clean Air and Nuclear Safety, I believe that ensuring a high quality application is the most important factor in developing a predictable licensing process. Therefore, including completeness and technical sufficiency reviews will better inform the staff's licensing review effort and aid in establishing schedules that are specific for an application. The real benefit of such an endeavor, however, is to encourage better applications. In order to successfully achieve that goal, the staff should ensure that the criteria used for this expanded scope of review are clear and transparent.

I also believe recommendation no. 4, for staff to seek additional opportunities to use Environmental Impact Statements completed by other governmental agencies for NRC COL reviews, has substantial merit. The Council on Environmental Quality has continuously encouraged such cooperative efforts in various guidance documents over the past ten years and I support the staff continuing its efforts in this regard.

Likewise, I believe recommendation no. 6, encouraging the use of electronic document management techniques to achieve schedule reductions, is an item in which the staff has already made great strides and I would encourage any further efficiencies that can be realized through the use of information technology. In doing so, the staff should ensure that those at a technologically disadvantage continue to have easy and full access to agency documents and processes.

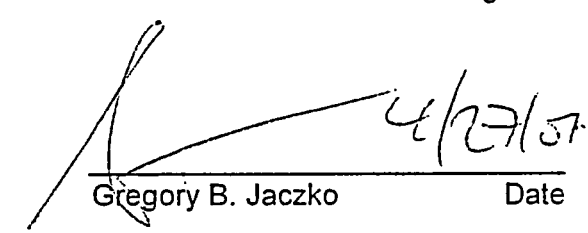
I do not, however, support the remaining recommendations. Regarding recommendation no. 1, as I indicated in various venues last year, I believe mandatory hearings play a pivotal oversight role in ensuring the adequate protection of public health and safety and the environment. Because it is the Commission that is ultimately responsible for any decision regarding a license application, I believe the Commission itself should conduct the mandatory hearings. Once the Commission makes this decision, it should then deliberate more fully on how the Commission envisions that these hearings will proceed.

I am not, however, open to the possibility of reinterpreting section 189a.(1)(A) of the Atomic Energy Act to suggest that if there is a contested proceeding, it can replace an uncontested proceeding. This is particularly unacceptable in light of the recent changes to Part 2 included in the Part 52 final rulemaking package eliminating the automatic stay provision of the Commission's regulations. With the recent changes to section 2.340, this recommendation would completely delegate to the staff the authority to issue a license without any required Commission involvement unless a majority of the Commission acts to interrupt the licensing process. I believe this continued "streamlining" of the procedures aimed at preventing direct Commission involvement in major licensing decisions removes a basic responsibility from the Commission and I do not support it.

Furthermore, I do not support the recommendation to reduce the public comment period on the scoping and draft stages of the NEPA process to 45 days. As the task force noted in its report, the agency routinely receives requests for extensions of time in which to comment on these voluminous documents and those requests often come from other government agencies. Not only will extension requests likely increase in number if we shorten the comment period, but this could also cause scheduling difficulties, especially with the added complexity of relying largely on contractor resources. I believe that the predictability of our environmental review process is more important than the minimal savings gained by limiting the public's comment period. Additionally, the discussion surrounding this recommendation did not include any weighing of the public's perception of such a change and the resulting potential impact upon the agency's new reactor licensing process. Therefore, I do not view this change as desirable, either from the standpoint of providing a reasonable opportunity for public comment, or from a scheduling efficiency perspective.

I also do not support recommendation no. 5, establishing an Environmental Review Working Group to evaluate environmental review activities for further efficiencies. Again, I do not believe we are at a point in our process where establishing such a group makes sense, nor do I believe we gain any efficiencies by taking staff away from their primary obligation of technical review to instead engage in a review of the review process itself. I am also troubled by the suggestion that the staff adopt a philosophy more consistent with 'reasonable assurance' rather than 'unassailability.'" NEPA is the agency's responsibility, not the licensee's, and my understanding of the staff's approach to NEPA reviews is to guarantee a thoroughness that attempts to ensure that the agency meets this obligation. I appreciate the staff's efforts in this regard and support a continuation of the staff's current thorough reviews.

Regarding the forward-looking items recommended in the Report, I do not support seeking legislative changes to eliminate the mandatory hearing requirement for the reasons mentioned above. Nor do I support any additional generic rulemaking activities that are not already in process. The timing of such initiatives could, again, pull staff resources from what should be their primary focus - review of the applications submitted. Until this agency can better gauge how the potential wave of new reactor applications impacts the agency's resources, it would be counter to the promotion of predictability to inundate the staff with work above and beyond that which is required to ensure the agency's primary focus remains on a sufficient and thorough review of new reactor applications.



Gregory B. Jaczko

4/27/07  
Date





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COMJSM-07-0001

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REVISED  
Approved/Disapproved

April 18, 2007

*Peter Lyons* 6/20/07  
Peter B. Lyons Date

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SECY, please track.

cc: L. Reyes, EDO  
K. Cyr, OGC  
A. Vietti-Cook, SECY

Commissioner Lyons' Revised Comments on COMDEK-JSM-01-0001

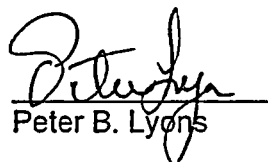
In my original vote on Task Force Recommendation #1, I approved the recommendation to revise 10 CFR 2.104 to reflect that hearings on contested issues fulfill the requirement to hold a hearing on each application for a construction permit. I disapproved the recommendation that hearings on uncontested issues be conducted by the Commission. After further careful consideration, I reverse my vote with respect to these two recommendations. (The remainder of my vote remains the same.)

First, with respect to the recommendation to revise 10 CFR 2.104, on the one hand, I do not anticipate that mandatory hearings on uncontested issues will be the probable source of new insights into licensing matters. The extensive staff work, applicant work, and review by public interest groups and possible contested issues will result in a greater depth of review than any mandatory hearing that does not take a *de novo* approach - - and I strongly do not believe that a *de novo* hearing is justified, is reasonable, or even possible short of setting up an entire "shadow" NRC. Thus, I do not believe that the mandatory hearings on uncontested issues are a good investment of regulatory resources. Thus I prefer that hearings should only be held on admitted contentions brought by parties to a proceeding.

But I am less convinced now that the Commission would be acting within the intent of Congress with respect to the mandatory hearing requirement if we act as reflected in my original vote. Indeed, when the Commission in CLI-05-17 (2005) expounded on the review standards of portions of the mandatory hearing, it considered statements made by Congress during the development of the requirement for mandatory hearings. See CLI-05-17, 62 NRC 5 at 40 & 41. The discourse appears to be based on an interpretation as reflected in NRC regulations and practice that a mandatory hearing is composed of both contested and uncontested issues, and these issues are to be considered in some fashion. I am simply not convinced at this time that we can deem the holding of a contested hearing, even with its potentially broad scope of issues and public processes, as satisfying the intent of the statutory requirement.

The Commission may wish to reconsider the issue following further discussion and deliberation, informed by the Congressional response to the legislation proposed in Additional Task Force Recommendation #1 and perhaps by the Commission's experience with the first few COL applications.

With respect to the recommendation that hearings on uncontested issues be conducted by the Commission, I am still concerned that the burden of preparing and conducting the hearing might impact substantially the Commission's conduct of other business both before and after the hearing. But, I must admit that the Commission's review of the Brown's Ferry restart was handled in an expeditious, yet adequately comprehensive way. And even if the initial review were to be conducted by the Atomic Safety and Licensing Board, it is likely that the Commission would undertake review as well, given the importance of the action. Thus, the Commission would likely be the ultimate decision maker in either case. Therefore, I am willing to have the Commission conduct the hearing on a pilot basis in order to evaluate the effectiveness and efficiency of such a process. My approval of this process is based on the assumption that the Commission's conduct of the hearing would adhere to workable guidelines, be conducted in an orderly and timely manner, and would result in a sound decision. Once several COL hearings come before the Commission, SECY should report to the Commission on its progress towards the goals outlined above and on the extent to which other Commission work is being impacted.

  
Peter B. Lyons      6/20/07  
Date