

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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April 19, 2012

The Honorable Gregory B. Jaczko
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko:

We were encouraged by the news of Nuclear Regulatory Commission's (NRC) approval on March 30, 2012, of the Construction and Operating Licenses (COLs) for new nuclear reactors at the Virgil C. Summer Nuclear Station (Summer) in South Carolina. At a time when our nation's economy continues to struggle, these licenses, and the thousands of new jobs they create, are good news for South Carolina.

Yet, following the Commission's four-to-one vote, we are concerned that you have not clearly communicated the basis for your sole opposition to these licenses and the licenses issued for new reactors at the Vogtle Electric Generating Plant in Georgia on February 9, 2012. We would like you to clarify the basis for your opposition, which suggests to the public that the NRC is ill-equipped to require compliance with post-Fukushima safety improvements.

In a recent interview with the *National Journal*, you were quoted as saying:

*"If you're a homeowner selling your house, and you have the home inspection done, you have to make those improvements before you're going to be able to go through with your sale of the house. Once you sell the house, as the previous homeowner, you don't have any obligation any more. Once we issue that license, we've made a statement to everyone that we believe this plant can be safe to operate."*¹

This analogy misrepresents that a nuclear power plant licensee ceases to have any obligation to make safety improvements once it receives a license. It also implies that the NRC does not have the authority to impose regulatory changes after a license is issued. Yet, the NRC issued Fukushima-related safety enhancements on March 12, 2012, to the licensees currently operating

¹ <http://www.nationaljournal.com/magazine/going-nuclear-20120405>.

the 104 reactors here in the United States. The analogy you provided to the *National Journal* does not comport with NRC actions and does a disservice to the public by suggesting the NRC is unable to enforce compliance with safety requirements.

To the contrary, the new Vogtle reactors received the March 12 Fukushima-related safety requirements *after* having received their Construction and Operating Licenses (COLs) on February 9. On March 30, when the NRC issued COLs for the two reactors at the Summer plant, the COLs incorporated one of the March 12 requirements as a license condition. Other requirements were issued concurrent with the COLs, thus subjecting the new Summer reactors to the same regulatory requirements as the new Vogtle units. In the decision on the Summer COLs, the Commission majority cited testimony by Michael Johnson, Director of the NRC Office of New Reactors: "...Ultimately, the licensee would be subject to the same requirements regardless of the timing of the license issuance." The Commission majority further stated:

"... We have in place well-established regulatory processes by which to impose any new requirements or other enhancements that may be needed. The applicability of any new requirement will be determined when the justification is fully developed and we evaluate the Staff's bases. While these processes are well under way, it takes time to complete the steps necessary to ensure that any new requirements are technically justified and implemented appropriately."

However, in your dissent you criticize your colleagues for this approach:

"We already see the inconsistency that will be inevitable under the majority approach. The Summer COLs contain a license condition for a Fukushima-related requirement that was not included in the Vogtle licenses issued only a few weeks ago. This type of happenstance cannot justify issuing COLs with differing safety standards. But this will be the outcome if we proceed with licensing without proactively imposing license conditions requiring compliance with all Fukushima recommendations."

Given that the recently issued requirements apply to existing power reactor licensees including new COL holders, this appears to be a distinction without a difference, creating a false concern about the existence of differing safety standards.

In addition, in your dissent you wrote: "I continue to believe that we should require that **ALL** (emphasis added) Fukushima-related safety enhancements are implemented before these new reactors begin operating." However, the NRC March 12 safety enhancements have already shown such blanket requirements to be an improper objective. For example, pressurized water reactor licensees were not subjected to the order requiring boiling water reactors to have functioning hardened vents. Given design differences among U.S. reactors, broad language binding a licensee to comply with undeveloped requirements risks delays and litigation in a fruitless attempt to interpret nonspecific requirements. We understand you first proposed this approach in your dissent on the Vogtle COLs and defended your approach by citing NRC actions following the Three Mile Island accident, actions that prompted Congress to pass a law to reform the licensing process.

Collegial policy differences are essential to proper Commission policymaking. In your votes on these new plant licenses, you undermine the collegiality of the Commission by once again portraying yourself as the only commissioner who places public health and safety as the paramount concern. Given that all four of your colleagues felt compelled to write the White House last fall that your “conduct as Chairman is inconsistent with the NRC’s organizational values and impairs the effective execution of the agency’s mission,” this strikes us as a less than accurate portrayal of what is transpiring at the Commission. In light of this, we seek a clearer understanding of the basis for your views.

Accordingly, and pursuant to Rule X and XI of the U.S. House of Representatives, please respond to the following questions and requests by May 3, 2012:

1. Do you believe that all the Fukushima-related safety enhancements the NRC issued on March 12, 2012, are applicable to the new reactors under construction at Vogtle and Summer? If not, please explain.
2. Please describe your understanding of any material differences between the Fukushima-related safety enhancements for the new units at the Vogtle and Summer sites. In particular, please describe any differences in the NRC’s ability to inspect and/or enforce the Fukushima-related safety enhancements issued on March 12, 2012.
3. Please describe your understanding of the NRC's ability to issue orders and licensees’ ability to escape compliance with them.
4. Please explain the basis for your concern that the NRC staff does not effectively ensure that licensees live up to their commitments and responsibilities to comply with orders issued by the Commission.
5. Please provide a copy of the license condition you proposed that you refer to in your dissent to the Summer mandatory hearing decision.
6. When did you cast your initial vote on the adjudicatory decisions for the Vogtle and Summer mandatory hearings? Did you request any extensions of voting time? If so, please explain when and for how long.
7. When did you cast your final votes on the adjudicatory decisions for the Vogtle and Summer mandatory hearings? Did you request any extensions of voting time? If so, please explain when and for how long.
8. Please describe what factors other than cost are analyzed under the “backfit rule.”

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Thank you for responding promptly to our request. Should you have any questions, please do not hesitate to contact Annie Caputo of the Majority Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman
Committee on Energy and Commerce



Ed Whitfield
Chairman
Subcommittee on Energy and Power



John Shimkus
Chairman
Subcommittee on Environment and
the Economy

cc: The Honorable Henry A. Waxman, Ranking Member

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

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy