

July 2, 2015

COMSGB-15-0003

MEMORANDUM TO: Commissioner Svinicki
Commissioner Ostendorff
Commissioner Baran

FROM: Stephen G. Burns */RA/*

SUBJECT: COMMISSION INVOLVEMENT IN EARLY STAGES OF
RULEMAKING

At several points throughout its history, this agency has taken the opportunity to reassess the effectiveness of its rulemaking process. Most recently, the NRC looked comprehensively at the process in the context of assessing cumulative effects of regulations, and, as a result, the Commission ultimately approved a series of enhancements to address these concerns, (SRM-SECY-11-0032). However, the agency has not in some time holistically assessed the role of the Commission in the process, in particular the Commission's role in the initial stages of a rulemaking effort. In the late 1990's and early 2000's, the Commission had a direct role in annually approving the agency's Rulemaking Activity Plan for the purpose of "ensur[ing] that the staff incorporates Commission policy direction into contemplated rulemakings at an early stage of rule plan development, before significant resources are expended." (SECY-97-240). In the mid-2000s, as noted by some of my colleagues in their votes on Project Aim, the Commission made efforts to streamline the rulemaking process, including giving authority to the staff to waive rulemaking plans for review and approval by the Commission (COMNJD-06-0004/COMEXM-06-0006). Today, the primary opportunity for the Commission to look comprehensively at staff's proposed rulemakings is through the annual budget process.

Of note, both the Senate and House Committee reports on the FY 2016 appropriations bills contain language noting Congress's concern with the Commission's role in approving rulemaking activities, as well as other checks, such as ACRS and CRGR reviews, and such concerns were also noted in associated hearings on the Commission's proposed FY 2016 budget. Specifically, the House Fiscal Year 2016 Energy and Water Development, and Related Agencies Appropriations report would direct the Commission "to reestablish the pre-2006 rulemaking process." The Senate Fiscal Year 2016 Energy and Water Development Appropriations report would direct the Commission to return to the rulemaking process outlined in NUREG/BR-0053, Revision 6 and directs the Commission to make conforming changes to NRC Management Directive 6.3 to be consistent with the process in the NUREG. Both reports would also direct the Commission to report to Congress on rulemaking activities. I fully appreciate that the Committees may perceive that the NRC lacks sufficient early Commission engagement in agency rulemaking activities. I also recognize that there was some support during our deliberation of Project AIM for withdrawal of certain prior waivers of Commission involvement on rulemaking.

In my view, the Commission should take action to address the concerns about the Commission's role in the rulemaking process, not only to address the apparent concerns of Congress, but also as a matter of good government. As such, I am seeking support from the Commission to direct staff to provide the Commission a proposed plan for increasing the Commission's involvement in the rulemaking process with the objective of ensuring early Commission engagement before significant resources are expended. The proposed plan should include, at a minimum, a recommendation for possibly reintroducing Commission approval of the Rulemaking Activity Plan; assessing and addressing any lessons learned from the past changes to Commission engagement in the rulemaking process; and a recommendation for reconsideration of the Commission's 2006 direction with respect to the approval of rulemaking plans and the reviews of proposed rules by the Committee to Review Generic Requirements and the Advisory Committee on Reactor Safeguards. The proposed plan should also include proposed measures to minimize the impact on the overall length of the rulemaking process.

The staff shall provide the Commission with a notation vote paper with the staff's evaluation and recommendations within 60 days of the Staff Requirements Memorandum.

SECY, please track.

cc: SECY
EDO
OGC
OCA
OPA
CFO