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RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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May 13, 2016

The Honorable Stephen G. Burns  
Chairman  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Dear Chairman Burns:

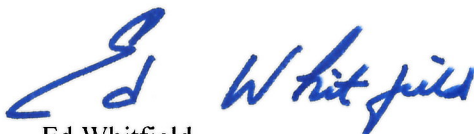
Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Wednesday, April 20, 2016, to testify at the joint hearing entitled "Fiscal Year 2017 Nuclear Regulatory Commission Budget."

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.

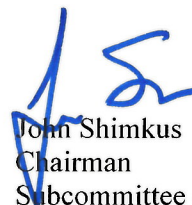
To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on May 27, 2016. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Will.Batson@mail.house.gov](mailto:Will.Batson@mail.house.gov).

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

Sincerely,



Ed Whitfield  
Chairman  
Subcommittee on Energy and Power



John Shimkus  
Chairman  
Subcommittee on Environment  
and the Economy

cc: The Honorable Bobby Rush, Ranking Member, Subcommittee on Energy and Power  
The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment

## Additional Questions for the Record

### The Honorable John Shimkus

1. At the outset of Project Aim, the Commission requested a Strategic Workforce Plan (SWP) to “ensure that the right people with the right skills are in the right place at the right time.” This document was provided to the Commission in February of this year, prior to Commission action on recommendations included in the “Integrated Prioritization and Re-Baselining of Agency Activities” report.
  - A. How do the FTE reductions included in the Commission’s decision on the report align with the recommendations contained in the Strategic Workforce Plan?
  - B. Will the Chief Human Capital Officer update the SWP to account for the Commission’s recent action on the Integrated Prioritization recommendations?
  - C. What tasks are the FTEs that were identified in the recommendations currently working on?
  
2. The NRC Principles of Good Regulation state: “The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities. The highest technical and managerial competence is required, and must be a constant agency goal.” Contrary to this principle, the NRC has had documented failures in applying best practices in managing requests for additional information (RAIs) when reviewing licensing actions.
 

From 2000 to 2010, the NRC, on average, completed reactor license renewal application reviews in 24 months and issued 16 RAI letters. However, since 2011, the NRC has, on average, taken 40 months to complete license renewal reviews and issued 28 RAI letters. There is a similar trend with the NRC’s review of power uprate applications. From 2000 to 2010, the NRC, on average, completed power update application reviews in 10 months and required 11 RAI response letters. However, since 2011, the NRC has, on average, taken 20 months to complete update reviews and required 39 RAI response letters.

  - A. What is the Commission doing to identify the root cause and correct the dramatic increase in the NRC’s use of RAIs?
  - B. Will the Commission agree to take the actions necessary to restore the licensing schedule and RAI discipline in place prior to 2011?
  
3. As the existing fleet of nuclear power plants undergo steps to maintain and upgrade plant systems, the issue of digital instrumentation and controls, or I&C, is extremely important to address. Replacing antiquated I&C equipment with modern technology in plant systems can provide significant improvements to safety, reliability and efficiency of nuclear power plants.
  - A. What is the Commission doing to ensure an efficient and reasonable regulatory framework is in place that will facilitate licensees in safely upgrading and modernizing I&C equipment?

- B. The Commission recently disapproved staff's recommendation that relied on qualitative factors to require certain standards for digital I&C equipment. However, the Staff Requirements Memorandum in the matter did not acknowledge that the staff attempted to justify their recommendation based on qualitative factors, an issue that has been of central concern to this Committee. Did the Commission agree or disagree specifically with the manner in which staff attempted to apply qualitative factors to their justification to impose additional requirements for I&C?
  - C. The Commission has directed the staff to develop an integrated strategy to modernize the NRC's digital I&C regulatory infrastructure. Please describe what considerations and components will be a part of that strategy, as well as the expected timeline and opportunity for stakeholders to provide input.
4. With respect to the adequate protection exemption to the backfitting rules, the Commission has stressed that the regulations are presumed to ensure adequate protection of public health and safety and "that presumption can be overcome only if significant new information or some showing that the regulations do not address some significant safety issue," and the need to redefine the level of protection that is adequate should be "rare." Recognizing that there is no prescriptive definition of "adequate protection:"
- A. Should actions imposing a backfit to provide adequate protection, or redefine the level of protection that is adequate, be relatively rare and require significant new information indicating that a safety issue is not adequately addressed by the Commission's current regulations?
  - B. Absent extraordinary circumstances, should the Commission make the final decision on whether a backfit fits within one of the adequate protection exceptions?
5. The NRC is statutorily required to recover approximately 90 percent of funding in fees assessed to holders of an NRC license or charged to a license applicant. These fees charged for service or a "thing of value."
- A. The timing associated with the "fee rule" can impose uncertainties and budgeting challenges for NRC licensees who fund the agency. The NRC releases the draft rule in March, which goes through the public comment period. Then the final rule is published in August at which point the NRC may need to revise its revenue projections to "true up" to the 90% level. This leaves little time for licensees to adequately budget or respond to the final rule. Is the Commission aware of challenges for licensees resulting from timing and a lack of predictability in the fee rule process and how is the Commission addressing those challenges?
  - B. NRC fees are recovered through two mechanisms. The first category, known as "Part 170 fees," are charged for specific actions associated with NRC licensing activities and are therefore variable depending on the amount of billable work that materializes over the year. The second category, known as "Part 171 fees," is charged to various classes of NRC license holders on an annual basis. As a result of this construct, if the Commission miscalculates the variable, or Part 170, charges, license holders under the Part 171 end up being charged more. Please describe how you manage this process to provide predictability for licensees.

- C. The draft “fee rule” for the current fiscal year calculates the NRC staff “productive hours” to increase this year. I encourage this trend to continue in the upcoming years. How are “productive hours” calculated throughout the organization? For example, does the Chief Human Capital Officer set milestones and track worker productivity to inform this calculation?
6. For the reactors currently under construction, there will likely be more than a thousand separate Inspections, Tests, Analyses, and Acceptance Criteria, or “ITAACs,” in total, to review and close-out before the reactors can begin operating. Unless managed closely, the ITAAC process may be an area where unnecessary and costly delays could occur.
- A. On April 1<sup>st</sup>, the Commission issued a Staff Requirements Memorandum (SRM) approving the ITAAC hearing procedures. The SRM appears that the Commission took some positive steps to improve upon the staff recommendations to be implemented in a manner that complies with the Commission’s directions. How will the Commission ensure that the ITAAC hearing procedures are implemented in accordance with the Commission’s instructions?
- B. What other steps are being taken to ensure that the ITAAC process is as efficient as possible—for example, what can be done to ensure that NRC staff complete their review of ITAAC closure notifications in a timely manner?
- C. Is the Commission requesting adequate resources in its budget for these ITAAC activities, and is the Commission prepared for the “wave” of ITAAC closures anticipated to occur as construction at the reactors in Georgia and South Carolina nears completion?
7. Once Nuscale submits its design certification application to the NRC, how will NRC plan to make its review process and fees transparent to the applicant and how will the applicant know that NRC is on track? For instance, will NRC provide progress reviews and reports available to the applicant that clearly indicate whether NRC’s review is proceeding as planned – on time and on budget?
8. Openness is one of NRC’s Principles of Good Regulation. Technology has made tracking and logistics incredibly transparent. For example, FedEx tracks hundreds of thousands of packages in real-time, everywhere in the world, down to specific locations and when packages are out for delivery.

Last year, this Committee asked the Commission would consider developing a tracking system for license amendment requests that would be available for licensees to know in real-time the status of their licensing actions. The Commission’s response stated that licensing project managers “maintain a tracking system” and “routinely communicate with licensees regarding licensing actions under review.” The response did not address whether the Commission would consider the merits of this proposal. Will the Commission examine options to improve transparency at the Commission, specifically methods to track licensing actions, including the status of project manager review, that could be easily accessed by licensees and applicants?

9. As part of its mandate the Nuclear Regulatory Commission regulates the medical use of certain radiolabeled products that treat cancer and other life-threatening diseases. The NRC’s

regulations require that an oncologist treating patients with an anti-cancer therapeutic radiopharmaceutical must be licensed as an “Authorized User.” It has come to our attention that the current training and experience requirements create unnecessary burdens and barriers for experienced hematologists and oncologists who would like to become authorized to administer patient-ready doses of alpha- and beta-emitting cancer treatments. Under the current framework, hematologists and oncologists who want to become Authorized Users must complete 700 hours of training and experience, including a minimum of 200 hours of classroom / laboratory training in radionuclide handling techniques. This requirement is inappropriate for patient-ready doses of alpha and beta emitters, which pose minimal safety and handling risks prior to and after administration. In addition, the current requirement has prevented otherwise-experienced hematologists and oncologists from becoming Authorized Users. This has led to a shortage of Authorized Users able to administer therapeutic radiopharmaceuticals, particularly in rural areas. The NRC is currently in the process of finalizing its rule on the “Medical Use of Byproduct Material—Medical Event Definitions, Training and Experience, and Clarifying Amendments.” This rulemaking presents an opportunity for the NRC to establish a training requirement commensurate with the precautions necessary to administer patient-ready doses of alpha and beta emitters. How does the Commission plan to address this issue in the final rule to either modify the regulations to reduce the training and experience requirements for these lower-risk products, or describe a process for a separate rulemaking proceeding to specifically address this issue?

### **The Honorable Markwayne Mullin**

1. In both the 2014 and 2015 Fee Recovery Rules, the NRC has accounted for the reactor closures and the resulting loss of those fees by billing the remaining reactors more to make up for the decrease in revenue. For example, the NRC stated in their 2015 Fee Recovery Rule: *“The permanent shutdown of the Vermont Yankee reactor decreases the fleet of operating reactors, which subsequently increases the annual fees for the rest of the fleet.”*
  - A. Is it fair and appropriate to increase fees on operating reactors to compensate for the closure of other plants or is that simply the result of how the NRC’s fee recovery is structured under the law?
2. The NRC’s FY 2017 budget shows a reduction of 90 FTE, but a cost reduction of only \$4.8 million in the NRC programs. The NRC estimates the average cost of an FTE is \$165,000.
  - A. A reduction of 90 FTE should yield approximately \$14.8 million in savings. If the NRC is reducing its staffing levels, why doesn’t it result in more cost savings?
  - B. The FY 2017 budget proposes 3,537 in FTE. However, NRC testimony elsewhere indicates the NRC will end FY 2017 with 3,344 FTE. How will the NRC ensure that these savings are realized and licensees are not unfairly charged for the cost of empty chairs?
3. The NRC expects to spend \$305 million on corporate support spending for 2016. The NRC has budgeted \$319 million for corporate support spending in FY 2017 with the potential reduction to \$315 if Project Aim efficiencies are implemented. However, this amount doesn’t count \$26.3 million in corporate support spending that is proposed to be “re-aligned”

to no longer count as corporate support. For an apples-to-apples comparison, this means corporate support spending will increase \$36 million in spite of Project Aim.

- A. Please provide a detailed description of actions the NRC is taking to achieve actual reductions in corporate support costs that do not involve renaming, realigning, or simply accounting differently for the same costs by transferring them to the business units.
  - B. Please include when those actions will yield actual savings evident in the size of the NRC's budget and the amount of those savings.
4. The NRC testimony states that \$9.9 million in Project Aim savings were applied in the FY 2017 budget, but the NRC's programs only decreased by \$4.8 million.
    - A. Please explain why the NRC characterizes the \$9.9 million as savings if it simply reallocated \$5.1 million to be spent in other ways.
    - B. Of the additional \$31 million in Project Aim savings that could be implemented in FY 2017, please estimate the portion that will yield actual savings and the portion that will be re-allocated for expenditure in other ways.

### **The Honorable Gene Green**

1. In January 2015, the Texas Commission on Environmental Quality (TCEQ) sent a letter to the NRC, requesting clarification on the State of Texas's authority to license the disposal of Greater-than-Class C low-level that may contain transuranic waste. In its response, 15 months later, the NRC said it would have to further examine the issue.
  - A. Can you share with the Committee what is the current status of the State of Texas's inquiry?
  - B. What guidance and assistance has the NRC provided to TCEQ regarding its request to license a GTCC waste facility?
  - C. Does the NRC anticipate that regulatory changes will be necessary to allow the State of Texas to license a GTCC waste facility?
2. Last year, Waste Control Specialists announced it intends to apply to the NRC this year for a license to open a consolidated interim storage facility in Andrews County, Texas. It is my understanding that this would be the first time a private entity has applied for a license to store nuclear waste.
  - A. Chairman Burns, does the NRC have a plan in place to consider this application? If so, can you provide a brief overview of that process?
  - B. Has the NRC been working with Waste Control Specialists in anticipation of its application? If so, what assistance has been provided to WCS?
  - C. How long do you anticipate the review process to take?

D. Does the NRC have the resources needed to considered WCS's application in this timeframe?

## McCloskey, Bridin

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**From:** Batson, Will [<mailto:Will.Batson@mail.house.gov>]

**Sent:** Friday, May 13, 2016 4:20 PM

**To:** Adams, Darrell <[Darrell.Adams@nrc.gov](mailto:Darrell.Adams@nrc.gov)>

**Cc:** Zach, Andy <[Andy.Zach@mail.house.gov](mailto:Andy.Zach@mail.house.gov)>; Hassenboehler, Tom <[Tom.Hassenboehler@mail.house.gov](mailto:Tom.Hassenboehler@mail.house.gov)>; McCarthy, David <[David.McCarthy@mail.house.gov](mailto:David.McCarthy@mail.house.gov)>

**Subject:** [External\_Sender] Questions for the Record from Subcommittees on Energy and Power and Environment and the Economy Joint Hearing (04-20-16)

Chairman Burns,

Thank you very much for testifying on April 20, 2016, at the Subcommittees on Energy and Power and Environment and the Economy joint hearing entitled, "Fiscal Year 2017 Nuclear Regulatory Commission Budget." Attached here are the questions for the record from the hearing.

Please confirm receipt and let me know of any questions or concerns.

Best,

**Will Batson**

Committee on Energy and Commerce

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