

THE LEADERSHIP OF THE NUCLEAR REGULATORY COMMISSION

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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THE LEADERSHIP OF THE NUCLEAR REGULATORY COMMISSION

WEDNESDAY, DECEMBER 14, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at 10:01 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Platts, Jordan, Chaffetz, Walberg, Lankford, Buerkle, Labrador, DesJarlais, Gowdy, Ross, Guinta, Kelly, Cummings, Towns, Kucinich, Tierney, Cooper, Connolly, Davis, Welch, and Murphy.

Staff Present: Ali Ahmad, Communications Advisor; Kurt Bardella, Senior Policy Advisor; Michael R. Bebeau, Assistant Clerk; Robert Borden, General Counsel; Will L. Boyington, Staff Assistant; Molly Boyl, Parliamentarian; Lawrence J. Brady, Staff Director; John Cuaderes, Deputy Staff Director; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Peter Haller, Senior Counsel; Christopher Hixon, Deputy Chief Counsel, Oversight; Justin LoFranco, Deputy Director of Digital Strategy; John Ohly, Professional Staff Member; Ashok M. Pinto, Deputy Chief Counsel, Investigations; Laura L. Rush, Deputy Chief Clerk; Jonathan J. Skladany, Counsel; Cheyenne Steel, Press Assistant; Rebecca Watkins, Press Secretary; Nadia A. Zahran, Staff Assistant; Erin Alexander, Fellow; Krista Boyd, Minority Counsel; Beverly Britton Fraser, Minority Counsel; Lisa Cody, Minority Investigator; Kevin Corbin, Minority Deputy Clerk; Ashley Etienne, Minority Director of Communications; Carla Hultberg, Minority Chief Clerk; Peter Kenny, Minority Counsel; Paul Kincaid, Minority Press Secretary; and Chris Knauer, Minority Senior Investigator.

Chairman ISSA. Good morning. The committee will come to order.

The Oversight Committee exists to secure two fundamental principles: First, Americans have a right to know what they get from the money Washington takes from them and that it is well spent. And, second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. We will work tirelessly, in partnership with citizen watchdogs, to deliver the facts to

the American people and bring genuine reform to the U.S. Government bureaucracy.

Today we have a distinguished panel, and today we will hear from five commissioners in what I believe will be an extraordinary hearing, one in which an independent Commission that Americans rely on to ensure that we have safe and reliable nuclear power—and, particularly, safe nuclear power. It has become a concern to this committee that, in fact, the Commission is not operating in a way that can continue.

I will not prejudge anyone's motives. I will not prejudge, here today, anyone's testimony. But I am deeply concerned. A Commission is not, in fact, an autocratic agency; it is not, in fact, the office of any one person. For a Commission to work successfully or any agency that has a board, whether it is the National Transportation Safety Board or a host of others that we rely on for safety particularly, it has to lead by consensus. Doing the basic arithmetic, this is a three-Democrat, two-Republican Commission. If it were three and two the other way or any combination, it should work, and work by consensus.

The history of this agency, of this Commission, has been generally to work by consensus or near-consensus. The committee will examine today whether, in fact, under current Commissioners and current structure, this Commission can get back to working on a consensus-like basis. Ultimately, all five of you are charged with the same level of responsibility and the same obligation to sound science and sound safety.

On a personal note, I have two active reactors in my district. Like anyone who has nuclear power in their district, every day we ask, "Is it safe?" and we are answered, "Yes." And every day we ask, "Could it be safer and more reliable?" We want that answer always to be increasingly "Yes."

So as we hear from Members on the dais and then hear from our witnesses, I think you will hear that all of us have the same concern. One of the ranking members, Mr. Kucinich, has been actively involved in his nuclear power plant for many years. But whether you have nuclear power in your district or not, we all understand that if all our nuclear power plants went down in America, the lights would go out. There is not sufficient replacement power today or in the foreseeable future to live without the highly reliable baseload that comes from nuclear energy.

So, as we hear from all of you, I intend to allow each of you to deliver your full opening statements and a reasonable amount of additional remarks if they are beyond what your opening statement is. I then intend to be very, very, very, very willing to hear you give a complete answer to any question. That is not to say that Members on the dais can go to 4 minutes and 59 seconds and then somehow find a question, but I want to hear from each of you.

This is not one in which anyone on the dais here today, to the best of my knowledge, has the capability of taking the seats you occupy. We have to rely on what we learn here today to know whether or not this Commission can operate at the level that is essential if we are going to have safe nuclear power in this country.

And, with that, I recognize the ranking member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

In March of this year, a massive earthquake and subsequent tsunami killed more than 20,000 people and devastated northern Japan. It caused catastrophic damage at four of the nuclear reactors at the Fukushima power station. This was the worst nuclear disaster since Chernobyl 25 years earlier. Our number-one priority on this committee must be ensuring that we learn the lessons of the Fukushima disaster and take appropriate action to improve the safety of nuclear power plants in this country.

Yesterday, the Union of Concerned Scientists issued a statement imploring our committee to focus today's hearing squarely on these safety issues. Dr. Lisbeth Gronlund, a physicist and co-director of global security program at UCS, urged the committee to focus on the safety issues facing the U.S. reactor fleet rather than on NRC's internal squabbling.

And let me say this on behalf of the American people. I ask that you, Chairman Jaczko, and to the other Commissioners, I ask that you not allow your disagreements to become the enemy of the destiny of this great organization. I also ask that you not allow your squabbling to have the effect of being a weapon of mass distraction. That is so important.

I strongly agree with the statements of Ms. Gronlund. The single most critical issue facing the NRC today is how it will respond to the Fukushima crisis. Five months ago, a task force of career NRC staff issued 12 recommendations intended to make U.S. nuclear power plants safer. In October, the staff prioritized eight of these recommendations. According to the staff, these recommendations have the greatest potential for safety improvement in the near term and should be started without delay.

For example, one of the key problems in the Fukushima disaster was that the tsunami knocked out the station's backup power, causing temperatures to rise in four reactors and resulting in the substantial release of radiation. NRC staff has recommended that all existing and new reactors in the United States strengthen their capabilities to mitigate these types of blackouts. I look forward to hearing the views of all the Commissioners today on how we can implement this and other reforms as soon as possible.

With respect to the allegations of mismanagement, let me say this. I agree that it is a serious matter when four Commissioners write a letter to the White House criticizing the chairman for creating a chilled work environment. These allegations should be taken seriously, which the White House has done. And I don't plan to be a referee; I believe that you should be able to work out these disputes among yourselves.

Based on my review of this issue, however, I also believe that the current chairman has exhibited one of the strongest safety records of any previous NRC chairman. I would urge anybody interested in this issue to read the harrowing transcripts of the recordings from the emergency operations center stood up by the chairman to help the people of Japan and United States citizens in close proximity to the Fukushima danger zone. You will be impressed by the skill and courage of those who worked around the clock to prevent this disaster from becoming far worse. As a result, I am struggling to determine how much of this squabbling relates to personality con-

flicts and how much relates to a fundamental disagreement about the statutory structure of the Commission itself.

The inspector general, after interviewing all five Commissioners and senior NRC staff, concluded that the chairman acted within his authority. The general counsel of the NRC agreed. After examining the chairman's actions relating to Fukushima, he wrote in an opinion that the chairman's actions fit within his authorities. Similarly, our committee's own investigation, which has included transcribed interviews of 15 senior NRC staff and the review of thousands of documents, has uncovered no violations of law or instances in which the safety of U.S. nuclear facilities have been placed in jeopardy.

The truth is that when Congress reorganized the NRC in 1980, it created a structure with a very strong chairman. As President Carter said at the time, the experience of Three Mile Island demonstrated that the Commission as a whole cannot deal expeditiously with emergencies.

Moreover, this is not the first time there has been conflict between the NRC chairman and the other Commissioners. A 1999 report by the inspector general described a very similar situation that found that the statutory structure of the NRC leads to tensions between the chairman and other Commissioners.

Finally, the natural question is, where do we go from here? Based on the letters all five Commissioners have sent to the committee in preparation for today's hearing, I believe they are all willing to fulfill the fundamental mission of the NRC. I sincerely hope that we can use today's hearing as an opportunity to get beyond past differences and refocus our energies on the goal of nuclear safety.

And I remind the Commissioners, when the hearing is over, when the lights are down and the cameras are out and the reporters are gone, you all still have to return to your workplace and work together to protect the safety of all Americans.

And, with that, I yield back.

Chairman ISSA. I thank the gentleman.

I now recognize the chairman of the Subcommittee on Regulatory Affairs, the gentleman from Ohio, Mr. Jordan, for 5 minutes for an opening statement.

Mr. JORDAN. I thank the chairman, and I will be very brief.

I just want to thank the chairman for having this important hearing today and remind the committee that this is in no way a partisan issue. This is about an important Commission who seems to be, based on some of the things we have said, not functioning the way we would want, maybe even use the term "dysfunctional." And I think it is important to hear from all of them, ask the appropriate questions and get to the bottom of this.

This is a Commission charged with making sure nuclear power plants are safe, and that is an important task. That is all about good government, and this is the appropriate venue to have this discussion and this hearing.

So I just want to thank the chairman and would yield back the balance of my time. I know the ranking member of our committee wants to make an opening statement, as well.

Chairman ISSA. I thank the gentleman.

We now recognize the ranking member of that same subcommittee, the other gentleman from Ohio, Mr. Kucinich, for 5 minutes.

Mr. KUCINICH. Thank you very much, Mr. Chairman, for calling this hearing.

Safety is the issue. I take it personally. This affects my State and my area. In February 2001, the NRC began investigating an aging mechanism that often caused cracking in reactors. As a result of these findings in late September 2001, the NRC determined that the Davis-Besse plant was at risk and should shut down by December 31st, 2001.

FirstEnergy, the owner of the Davis-Besse plant, which is in Port Clinton, Ohio, resisted the order, claiming that it could stay open without incident until March 2002. FirstEnergy argued that a shutdown would cause an unnecessary financial burden. Rather than following its own safety procedures and shutting down Davis-Besse, the NRC relented and allowed the plant to operate until February 2002.

After the plant had been shut down, workers repairing one of the five cracked control rod nozzles discovered extensive damage to the reactor vessel head. The workers found a large corroded crater the size of a football in the reactor vessel head next to one of the nozzles. Only $\frac{3}{16}$ of an inch of steel remained intact at the bottom. That began to bulge and crack.

The NRC later found that the plant might have been as close as 60 days from bursting. If it did, they would have had a major release of radio activity that would have jeopardized the immediate and long-term safety of millions of Americans, not to mention the single biggest source of freshwater in the world being jeopardized in the Great Lakes.

The Government Accountability Office later weighed in on this, calling it, quote, "the most serious safety issue confronting the Nation's commercial nuclear industry since Three Mile Island." The Department of Justice said that FirstEnergy admitted that they knowingly, quote, "knowingly made false representations to the Nuclear Regulatory Commission in the course of attempting to persuade the NRC that its Davis-Besse nuclear power station was safe to operate beyond December 31st, 2001," unquote.

FirstEnergy's insurance company became worried and commissioned an independent study to analyze the data from the incident. The study, which was released in April 2007, painted an even darker picture than the regulatory rebukes that came before it. The report found that the corrosion of the steel plate happened at a faster rate than was reported by FirstEnergy, bringing the reactor closer to a catastrophe incident than had previously been reported.

Now, despite the finding of these three bodies, just a few weeks before that study was released FirstEnergy asked the NRC to remove the requirement for independent assessments of Davis-Besse's operation. They asked for less oversight.

The NRC's 2004 confirmatory order modifying license lists some of FirstEnergy's malfeasant policies and actions that led to the 2002 incident, providing more evidence that profits were prioritized over safety. It specifically lists the key reasons the leak was allowed to persist and grow. FirstEnergy's self-policing mechanisms

failed. Worse, FirstEnergy tried to convince the NRC the problems were solved, when in fact they were not.

FirstEnergy continues to try to prioritize profits over safety. Since I don't have time here to cover in detail the full history of FirstEnergy's bad decisions, near-misses, and safety lapses, I ask unanimous consent to place into the record a document prepared by Beyond Nuclear which does that, Mr. Chairman.

Chairman ISSA. Without objection, so ordered.

Mr. KUCINICH. Several weeks ago, FirstEnergy had to shut down Davis-Besse to replace yet another reactor head because its design has flaws which creates leaking problems. In doing so, they found cracks in a building designed to protect the core from external missiles like planes, but also to prevent the release of radioactive air and steam in the event of a problem with the reactor. The latter scenario is what almost happened in 2001 at Davis-Besse and is exactly what happened at Fukushima when the containment buildings blew up from the steam buildup. A structurally compromised building affords less protection to protect the public.

True to form, there were important differences between the story FirstEnergy told the public and the real story, which I only uncovered because of my own investigation and because of my staff. Specifically, FirstEnergy tried to convince the public that the cracks were only cosmetic in nature, were few in number, and were not widely distributed. None of the above was accurate. And yet, FirstEnergy was eager to restart Davis-Besse, even though they will not know the cause of the cracking until February.

We should be looking at this. The corporations that run nuclear power plants are fundamentally no different than the corporations that drove our economy off a cliff. They will cut corners to maintain or increase profits in the absence of sufficient incentives to act differently. They must be sufficiently and carefully regulated. The consequences of the failing to do so are unthinkable.

I hope we will reflect on the NRC's position here and help to achieve a culture of independence, objectivity, and public interest over corporate interest, and that we will have complete dedication to safety.

I thank the chair for calling this hearing and for your attention to this critical matter at this time.

Chairman ISSA. I thank the gentleman. And I look back fondly on the years we have worked on this issue together on the committee, with each of us at different times being a subcommittee chairman.

Mr. KUCINICH. Thank you, Mr. Chairman.

Chairman ISSA. We now recognize our panel of witnesses.

Mr. Gregory Jaczko is the chairman of the Nuclear Regulatory Commission. The chairman is, I think, a particle physicist, to be more accurate—

Mr. JACZKO. Yes.

Chairman ISSA. —and an experienced policy advisor who has served on the Commission since 2005 and has served on both sides of the dome, both in the House and Senate, in the past.

Commissioner Kristine—I am going to try this again—Svinicki?
Ms. SVINICKI. Svinicki.

Chairman ISSA. Okay. And I grew up near Slavic Village, and I should be able to do these names better—is an experienced nuclear engineer, a policy advisor who came to the Commission in 2008.

Commissioner William Magwood IV—Commissioner Magwood joined the Commission just in 2010. He previously served 7 years as director of nuclear energy at the Department of Energy.

Commissioner William Ostendorff—Commissioner Ostendorff came to the Commission last year after a distinguished career in the nuclear navy and much time also with the Department of Energy.

And then, Commissioner George Apostolakis. Thank you for being understanding. The Commissioner is an expert in risk assessment and came to the Commission in 2010 after many years as a professor at MIT.

Gentlemen and lady, pursuant to the rules of the committee, all witnesses here will be sworn. Would you please rise to take the oath and raise your right hands?

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Let the record indicate all witnesses answered in the affirmative. Please be seated.

As I said earlier, nobody on the dais here knows anything other than what we have heard. You are here today so we hear all of you. So I will ask you to try to come close to 5 minutes. I am not going to gavel people if they are going through with their statements. And I am likely also going to be very generous in your response times so that we can fully hear from all of you here today.

Chairman Jaczko, would you please go first?

WITNESS STATEMENTS

STATEMENT OF GREGORY B. JACZKO

Mr. JACZKO. Well, thank you, Chairman Issa and Ranking Member Cummings and members of the committee.

We have been asked to appear before you today to discuss the management and operations of the United States Nuclear Regulatory Commission.

This year, 2011, has been an exceptionally challenging and productive year for the NRC. And, as usual, the NRC staff has done an outstanding job over the past year. And the agency once again scored among the top tier of Federal agencies in the 2011 Best Places to Work in the Federal Government rankings, scoring number one in all four major indices.

At the NRC, we anticipated that 2011 would be a busy year, but unexpected issues, most notably the Fukushima Daiichi accident and multiple natural disasters, including flooding in the Midwest in June, the earthquake on the east coast in August, and other serious threats, such as hurricanes and tornadoes, created additional pressures for the staff at NRC's headquarters and regional offices.

In spite of those challenges, the staff and the Commission remained focused on our critical safety mission. During the past fiscal year, we have performed thousands of hours of inspections at nuclear power plants and materials sites, took hundreds of enforce-

ments actions, reviewed more than 1,000 licensing actions and tasks, and issued a number of new regulations. And we completed a very important final safety culture policy statement.

The NRC has conducted a greater number of special inspections in the past year—21 to date—than at any point in recent memory. During the past year, we completed the safety and environmental reviews of the first two new reactor combined license applications and held mandatory hearings on both of these applications. And these were both historic actions by the Commission.

We issued final safety evaluation reports for the AP1000 and ESBWR design certifications and issued eight reactor license renewals. We also successfully completed two pilot applications for transition to our new risk-informed, performance-based approach to fire protection. And we held a meeting yesterday to talk about the progress that is being made on that issue.

We issued three new uranium recovery licenses, authorized the restart of one uranium recovery facility, and issued the license for the AREVA Eagle Rock centrifuge enrichment facility to be built in Idaho. We also completed the orderly closeout of our Yucca Mountain activities and preserved the technical work in 3 technical reports, more than 40 other reports, and in videotaped staff interviews.

We have also approved cybersecurity plans for all nuclear power plants, published approximately 30 new guidance documents, and hosted the first integrated regulatory review service mission to the United States. And that is an international, peer-reviewed mission that is done under the auspices of the International Atomic Energy Agency.

Now, the Commission itself was also incredibly productive in 2011. My colleagues and I held 38 public Commission meetings, 10 closed meetings, and issued 92 staff requirements memoranda on substantive Commission voting matters. This was 30 more substantive Commission decisions than we completed in fiscal year 2010. And in line with our commitment to transparency and openness, we noticed more than 1,030 public meetings and improved and expanded our public outreach. Construction of our new third headquarters building is also on schedule and on budget for opening in late 2012.

And, of course, the NRC undertook tremendous efforts in response to the March 11th earthquake and tsunami in Japan and the nuclear emergency at Fukushima Daiichi. In addition to monitoring the crisis and providing on-the-ground support in Japan, the Commission established a task force to review the accident and make recommendations to the Commission for enhancing reactor safety. This task force reported back with a comprehensive set of 12 safety recommendations addressing a broad range of issues. These recommendations have undergone additional reviews by the NRC staff, our Advisory Committee on Reactor Safeguards, and we have benefited from the insights of a broad range of stakeholders. The Commission has directed the staff to begin immediately implementing, partially or fully, five of the safety recommendations from the task force and set goals of completing station blackout rule-making within 24 to 30 months and has encouraged completion of all actions within 5 years.

Chairman Issa, Ranking Member Cummings, and members of the committee, this concludes my formal testimony today, and I would be pleased to respond to questions you may have. Thank you.

[Prepared statement of Mr. Jaczko follows:]

WRITTEN STATEMENT
BY GREGORY B. JACZKO, CHAIRMAN
UNITED STATES NUCLEAR REGULATORY COMMISSION
TO THE
OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
December 14, 2011

Chairman Issa, Ranking Member Cummings, and Members of the Committee, I appreciate the opportunity to appear before you to provide an overview of the management and operations of the United States Nuclear Regulatory Commission.

The year 2011 has been an exceptionally challenging and productive year for the NRC. The NRC staff has done an outstanding job over the past year under what have been, at times, challenging circumstances. The Commission never loses sight of the fact that our effectiveness as a safety and security regulator depends first and foremost on the staff's hard work and dedication.

Even with the pressures of the past year, the NRC once again scored among the top tier of Federal agencies in the 2011 Best Places to Work in the Federal Government rankings, conducted by the Partnership for Public Service. The NRC scored number one in all four major indices, including leadership and knowledge management, results-oriented performance culture, talent management, and job satisfaction. These rankings were determined through an analysis of the 2011 Federal Employment Viewpoint Survey conducted by the Office of Personnel Management.

At the agency, we anticipated that this past year would be busy, but several unexpected issues - most notably, the Fukushima Dai-ichi nuclear emergency in Japan - raised substantial

new challenges. Added to that, a spate of multiple natural disasters, including flooding in the Midwest in June; the earthquake on the East Coast in August; as well as hurricanes and tornadoes, created additional pressures. These natural disasters required close coordination with states, federal agencies and licensees, and involved the efforts and expertise of numerous staff at NRC's headquarters and regional offices.

During the past fiscal year, we have performed thousands of hours of inspections at nuclear power plants and materials sites. We have taken hundreds of enforcement actions, reviewed more than a thousand licensing actions and tasks, and issued a number of proposed and final rules. We also issued a final Safety Culture Policy Statement, establishing for the first time the Commission's expectations for individuals and organizations involved in NRC-regulated activities to establish and maintain a positive safety culture proportionate to the safety and security significance of their activities.

While many plants have performed very well this year, there are two plants in Column Four, on a five-column scale, of the Reactor Oversight Process Action Matrix after experiencing issues that the NRC views as safety significant. There are also two plants in Column Three, which indicates declining performance. The NRC has conducted a greater number of special inspections in the past year - 21 to date - than at any point in recent memory.

These developments, of course, are concerning for the specific plants involved, but as a regulator, we must be on guard to the possibility that they could be indicative of broader issues for the industry. Also, there are currently two units in extended shutdowns, one, Fort Calhoun, due to circumstances related to external events and the other, Crystal River, due to problems resulting from maintenance activities. Additionally, two units at the North Anna plant, in Virginia, were in extended shutdown this year due to the East Coast earthquake in August. Neither the Crystal River nor North Anna extended shutdowns were the result of declining licensee performance, and, in its current assessment of industry trends, the NRC staff has not identified any statistically significant adverse trends.

During the past year, we completed the safety and environmental reviews of the first two new reactor combined license applications for the Vogtle site in Georgia and the Summer site in South Carolina, and held mandatory hearings on both applications. We expect to make decisions on those applications within the next several weeks. We issued the final safety evaluation reports for the AP1000 and ESBWR design certifications, and issued eight reactor license renewals. We successfully completed the review and approval of two pilot applications for transitioning to National Fire Protection Association (NFPA) 805, a risk-informed, performance-based standard for fire protection at nuclear power plants, and worked with stakeholders to establish a submittal and review schedule for 29 anticipated transition applications.

We issued three new uranium recovery licenses, authorized the restart of one uranium recovery facility, and issued the license for the AREVA Eagle Rock centrifuge enrichment facility to be built in Idaho, the first such license approval issued in almost 5 years. And, in line with our responsibilities to ensure the safety and security of nuclear materials, we continued implementation of the License Tracking System and the National Source Tracking System. We also issued a final policy on the protection of sealed radiation sources containing cesium-137 chloride, which are used in blood irradiation, bio-medical and industrial research, and calibration of instrumentation and radiation measuring instruments.

We also continued to focus on moving forward and resolving long-standing safety issues such as: Generic Safety Issue (GSI)-191, concerning the potential for the blockage of boiling water reactors' suction strainers and pressurized water reactors' containment sump screens, due to debris accumulation; and GI-199, the updates to seismic hazard estimates for the Central and Eastern United States.

The NRC staff also completed the orderly close out of the Yucca Mountain high-level waste repository licensing program and the Department of Energy's license application. As part of this process, the staff conducted a comprehensive effort to collect and capture knowledge to

ensure that the agency's many years of technical work are preserved. This included documenting the agency's review and other knowledge about the program through three technical evaluation reports, over 40 other topical reports, as well as videotaped interviews of technical staff.

Cybersecurity is a serious concern for all agencies across the Federal government. In Fiscal Year 2011, we approved cybersecurity plans for all nuclear power plants and established an implementation plan to have all plants at a high level of cyber protection by the end of Fiscal Year 2012.

Approximately 30 NUREGs - reports or brochures on regulatory decisions, research, investigations and other technical and administrative information - were published on a wide variety of topics, such as degradation of core internals due to neutron irradiation and groundwater contamination. We sponsored the 23rd annual Regulatory Information Conference for government, nuclear industry, international agencies, and other stakeholders to meet and discuss nuclear safety and security topics and significant regulatory actions. More than 3,000 individuals registered for the March 2011 conference. We also hosted the first Integrated Regulatory Review Service mission to the United States to assess our regulatory infrastructure against international safety standards and good practices. The mission was coordinated by the International Atomic Energy Agency and concluded that the NRC has a well-established national policy and strategy for nuclear safety.

Transparency and openness are part of our formal NRC Organizational Values, and they are integral guiding principles in everything we do, both internally and externally. After the challenges we have faced over the past year, and the bright spotlight that has been shined on nuclear regulation, nuclear safety, and nuclear power plants by the Congress, the media and the public, the NRC continues to be accessible and open, and to make sure that all of our stakeholders understand what we are doing and why we are doing it.

The NRC has held many public meetings throughout the past year, noticing more than 1,030 public meetings in Washington, D.C., and around the country, addressing a full range of NRC issues. During fiscal year 2011, my colleagues and I held 38 public Commission meetings, 10 closed commission meetings, and 14 sessions to set the Commission agenda and issued 92 staff requirements memoranda (SRMs) on substantive Commission voting matters. This was 30 more SRMs than we completed in Fiscal Year 2010. And of the 381 requests submitted to the NRC for information under the Freedom of Information Act, we have closed out 338.

The NRC redesigned the agency's public website to improve navigation, content and accessibility, and substantially improved our web-based document management system to enable the public to more easily and quickly access all public documents. And, the agency has successfully begun to utilize new social media tools - including a public blog, Twitter and YouTube accounts - to enhance our outreach efforts.

As we have worked to fulfill our responsibilities for our safety and security mission, we have also been working to increase our effectiveness and efficiency as an agency. We have more efficiently executed the appropriations that Congress has given us by successfully working to reduce our carryover funds this year.

Construction of our new third headquarters building, Three White Flint North, is on schedule for opening in late 2012. One of the valuable lessons we learned after Three Mile Island was the importance of being co-located. The new building will allow headquarters staff to once again work in one central location to better support the agency's critical health and safety mission.

A summary of agency activities over the past year must, of course, include the tremendous agency efforts in response to the March 11, 2011, earthquake and tsunami and the resulting nuclear emergency at Fukushima Dai-ichi in Japan. In addition to our round-the-clock monitoring activities, at the request of the Japanese government, and through the United States

Agency for International Development, the NRC also sent a team of technical experts to provide on-the-ground support to the U.S. Ambassador in Japan.

The Fukushima Dai-ichi accident is clearly one of the most significant events in the history of nuclear power. The Japan nuclear emergency led national regulators worldwide to question whether such an accident could occur in their own country, and whether additional steps need to be taken to ensure that it does not. These concerns caused the NRC - less than two weeks after the nuclear accident in Japan - to launch a systematic and methodical review of our regulatory framework to determine whether changes need to be made to our own regulations.

The agency's Near-Term Task Force, which was established on March 21, 2011, was directed to review the insights gained from the Fukushima Dai-ichi accident and make recommendations to the Commission for enhancing reactor safety. Within 90 days, the Task Force reported back to the Commission with a comprehensive set of 12 safety recommendations that they believe are needed to strengthen nuclear safety.

These recommendations touch on a broad range of important safety areas including the loss of power due to earthquakes, flooding, or other natural disasters, to issues related to spent fuel pools damage, the need for hardened venting, and emergency preparedness. The Task Force's recommendations include proposed new requirements for nuclear power plants to reevaluate and upgrade their seismic and flooding protection, to strengthen their ability to deal with the prolonged loss of power, and to develop emergency plans that specifically contemplate the possibility of events involving multiple reactors. In the report, the Task Force emphasizes that strong NRC oversight is essential in addressing these challenges.

The Task Force's recommendations have now undergone several additional reviews by the NRC staff and the Advisory Committee on Reactor Safeguards (ACRS) and have been discussed at multiple public meetings. Through these efforts, we have benefited from the insights and perspectives of industry leaders, nuclear safety and environmental groups, and the

public. In several public meetings, the Commission itself has heard directly from a diverse array of these stakeholders.

The staff review of the Task Force's recommendations was completed two months ago. That review endorsed nearly all of the Task Force's recommendations, and laid out a detailed plan for prioritizing and implementing them. The staff review also identified several additional issues for consideration beyond the Task Force's recommendations, including measures related to spent fuel storage and emergency planning. At the Commission's direction, the staff will be looking at the Task Force's first recommendation regarding the overall structure of our regulatory framework separately from actions that could be initiated without delay.

The ACRS has completed the first major part of its review. In its review, the ACRS endorsed all the Task Force recommendations that it has examined thus far, and - like the staff - also proposed additional steps beyond the Task Force's recommendations. In endorsing these measures, the ACRS emphasized that in its expert view none of those steps would be negated by any new information we might receive about the Fukushima Dai-ichi accident.

Of course, as we acquire more information about the accident, we will determine whether there are any additional lessons to be drawn. For example, the Institute of Nuclear Power Operations recently released a Special Report on the Nuclear Accident at the Fukushima plant (INPO 11-005), which provides a detailed timeline of events after the earthquake and tsunami in Japan. The Commission established a longer-term review specifically for this purpose - to examine those issues for which the Task Force did not have enough information to provide recommendations. That longer-term review is underway, although not yet complete.

To date, the Commission has directed the agency's staff to begin immediately implementing - partially or fully - five of the safety recommendations from the Task Force. These recommendations cover issues including the loss of all A/C electrical power at a reactor (station blackout), reviews of seismic and flooding hazards, emergency equipment, and plant staff training. The Commission also set a goal of completing a station blackout rulemaking

within 24 to 30 months from now, and to strive for completion of all actions that should be taken without delay, in response to the lessons learned from Fukushima, within five years – by 2016.

The NRC staff, as well as the ACRS, has done a tremendous amount of work on Fukushima Dai-ichi-related issues. But while a great deal of work has been done, the Commission still has much work ahead. Many of the Task Force's recommendations call for the development of orders or rules - which would take some time to develop and implement. For those approved recommendations, the agency will conduct the necessary analysis, develop the technical basis, and take other steps before promulgating the new requirements. That process may take weeks or months in case of an order, or potentially years in the case of a new rule. Given those timeframes, I believe it is all the more important for the Commission to move forward swiftly.

None of the agency's many achievements during the past year could have happened without support from the entire NRC team - those working on the budget and finance issues, the legal aspects, the personnel and administrative support, the technical side, and more. By no means does my testimony cover the full breadth of the agency's wide-ranging activities. But these accomplishments are indicative of an agency with a strong focus on our mission, and the staff's steadfast efforts, day-in and day-out, to maintain nuclear safety and security.

We have many important issues on our plate right now - both internally to strengthen our organization and externally to continue ensuring the safety and security of our nation's nuclear facilities and materials. We cannot predict with any certainty all the issues that might arise in the upcoming year. That makes it all the more important that we prudently manage the resources entrusted to us by the American people, take full advantage of all the talents and expertise that our diverse team brings to the table, and keep our focus - first and foremost - on our safety and security mission.

Chairman Issa, Ranking Member Cummings, and Members of the Committee, this concludes my formal testimony today. Thank you for the opportunity to appear before you.

I would be pleased to respond to any questions you may have on the management of the NRC and the Commission would be pleased to address any policy matters of interest to the Committee.

Chairman ISSA. Thank you, Chairman.
Commissioner Svinicki? I will get it eventually.

STATEMENT OF KRISTINE L. SVINICKI

Ms. SVINICKI. Thank you, Chairman Issa, Ranking Member Cummings, and members of the committee, for the opportunity to appear before you today.

You have requested that members of this Commission address the topic of management and leadership issues at the NRC.

I have been privileged to serve as a Commissioner of the NRC for over 3-1/2 years. During this time, the agency's approximately 4,000 technical, legal, and administrative staff members have impressed me with their professionalism and their unyielding commitment to the NRC's important missions of nuclear safety and nuclear security. Their efforts are led by a skilled group of senior executive service managers, most of whom have decades of experience, not just in Federal service but specifically at the NRC. I have confidence in the work they do and believe the Nation is well served by their constant vigilance on matters of nuclear safety and security.

I appear before you today, however, to address topics related to the current functioning of the Commission itself and the engagement between the Commission and the agency staff.

I have served as a Commissioner with six other individuals—four currently serving and two whose service on the Commission has ended—and under the tenure of two different chairmen. Although some amount of tension is expected in any deliberative body, I believe the level of tension among the currently serving members of this Commission is impeding the collegial processes of the NRC and is obstructing the functioning of key processes between the Commission and the agency staff. These tensions are rooted in an interpretation of the NRC chairman's statutory authorities as well as his conduct toward his Commissioner colleagues and the NRC staff.

Despite these problems, I believe it is likely that the Commission would have continued its tug of war over these issues, to the extent possible, out of the public spotlight. Events of the past few months, however, pushed the Commission beyond its tolerance for current circumstances and led us to communicate our concerns beyond the Commission.

As a result of interpretations of the NRC chairman's authorities that grant the chairman the authority to decide which issues appropriately involve any of the Commission's statutory functions and to interpret for the agency staff the meaning of direction issuing from Commission decisions, the situation at the NRC has, in my view, become increasingly unworkable and threatens the viability of a functioning Commission structure.

While the Reorganization Plan No. 1 of 1980 certain administrative responsibilities in the hands of the chairman, the legislative history makes clear that it was not intended to displace the ultimate authority of the full Commission over the affairs of the agency. The plan itself includes a provision that the Commission may decide by majority vote in any area of doubt whether any matter pertains to one of the Commission's statutory functions. In its de-

liberations on the plan, Congress also emphasized that the Commission shall have full access to all information within the agency, including that in existence and that which requires development by the staff. The chairman may not withhold or delay providing information requested by the Commission. In both of these critical areas, however, I do not believe that the processes under the current chairman satisfy the intent of the law.

Over the past year and a half, the Commission has engaged in a protracted effort to resolve its disagreements over its respective roles and responsibilities through a comprehensive revision of its internal operating procedures. This effort proved ultimately unfruitful, however, in resolving the underlying disagreements.

Exacerbating these longstanding disagreements are recent events of concern that have come to the Commission's attention. In October of this year, the chairman appeared at an annual retreat held by the agency's executive director for operations and senior agency staff. Within days of this event, a number of attendees from the retreat sought me out to express their strong reaction to the chairman's statements. They described the content of his remarks as an expression of contempt for the Commission. It was described to me that the chairman instructed those present to advance his agenda and that this must come at the price of having their own independent assessments and recommendations. The executive director for operations described it to me by saying, "We were pretty much instructed to leave our brains at home."

Hearing of this event was a formative moment in leading me to conclude that the points of tension between the chairman and the Commission were no longer isolated to the Commission itself. Interference in the flow of information coming to the Commission was occurring to such a pervasive extent and was being conducted so brazenly that the Commission needed to take additional action.

Another circumstance that I believe caused the Commission to bring these issues forward is the chairman's continued outbursts of abusive rage directed at subordinates within the agency staff. All members of the Commission, including me, have been on the receiving end of this conduct, which was also acknowledged by the NRC inspector general in his testimony before the House Energy and Commerce Committee's Subcommittee on Environment and the Economy earlier this year.

These incidents appear to have grown more frequent, however, and I am now aware of this conduct being directed against staff at various levels in the agency. Some of these employees have spoken to me privately of the embarrassment and humiliation of being made to lose their composure in front of their colleagues or to be seen exiting the chairman's office in a state of obvious upset.

I regret that we have come to this point, but our agency, one whose fundamental mission is to ensure the health, safety, and security of the American public, is premised on the variability of individuals to speak out. It is my hope that a positive lesson about the willingness to speak out will be drawn by not just the NRC staff listening to this hearing but by all those responsible for safety and security across our government.

Thank you.

[Prepared statement of Ms. Svinicki follows:]

**Statement of Kristine L. Svinicki
Commissioner, U.S. Nuclear Regulatory Commission
Before the Committee on Oversight and Government Reform
United States House of Representatives**

Hearing on "The Leadership of the Nuclear Regulatory Commission"

December 14, 2011

Thank you, Chairman Issa, Ranking Member Cummings, and members of the Committee for the opportunity to appear before you today. You have requested that members of this Commission address the topic of management and leadership issues at the NRC. I have been privileged to serve as a Commissioner of the NRC for over three and a half years. During this time, the agency's approximately 4000 technical, legal, and administrative staff members have impressed me with their professionalism and their unyielding commitment to the NRC's important missions of nuclear safety and nuclear security. Their efforts are led by a skilled group of Senior Executive Service managers, most of whom have decades of experience not just in federal service, but specifically at the NRC. I have confidence in the work they do and believe that the Nation is well served by their constant vigilance on matters of nuclear safety and security. I appear before you today, however, to address topics related to the current functioning of the Commission itself and the engagement between the Commission and the agency staff.

I have served as a Commissioner with six other individuals (four currently serving and two whose service has ended) and under the tenure of two different Chairmen. Although some amount of tension is expected in any deliberative body, I believe the level of tension among the currently serving members of this Commission is impeding the collegial processes of the NRC and is obstructing the functioning of key processes between the Commission and the agency staff. These tensions are rooted in an interpretation of the NRC Chairman's statutory authorities, as well as his conduct toward his Commissioner colleagues and the NRC staff. Despite these problems, I believe it is likely that the Commission would have continued its tug of war over these issues – to the extent possible – out of the public spotlight. Events of the past few months, however, pushed the Commission beyond its tolerance for current circumstances and led us to communicate our concerns beyond the Commission.

As a result of interpretations of the NRC Chairman's authorities that grant the Chairman the authority to decide which issues appropriately involve any one of the Commission's statutory functions, and to interpret for the agency staff the meaning of any direction issuing from Commission decisions, the situation at the NRC has, in my view, become increasingly unworkable and threatens the viability of a functioning Commission structure.

While the Reorganization Plan No. 1 of 1980 concentrated certain administrative responsibilities in the hands of the Chairman, the legislative history makes clear that it was not intended to displace the ultimate authority of the full Commission over the affairs of the agency. The Plan itself includes a provision that the Commission may decide by majority vote – in any area of doubt – whether any matter pertains to one of the Commission's statutory functions. In its deliberations on the Plan, Congress also emphasized that the Commission shall have full access to all information within the agency, including that in existence and that which requires development by the staff. The Chairman may not withhold or delay providing information requested by the Commission. In both of these critical areas, however, I do not believe that the processes under the current Chairman satisfy the intent of the law.

Over the past year and a half, the Commission has engaged in a protracted effort to resolve its disagreements over its respective roles and responsibilities through a comprehensive revision of its internal operating procedures. This effort proved ultimately unfruitful, however, in resolving the underlying disagreements. Exacerbating these long-standing disagreements are recent events of concern that have come to the Commission's attention.

In October of this year, the Chairman appeared at an annual retreat held by the agency's Executive Director for Operations and senior agency staff. Within days of this event, a number of attendees from the retreat sought me out to express their strong reaction to the Chairman's statements. They described the content of his remarks as "an expression of contempt for the Commission." It was described to me that the Chairman instructed those present to advance his agenda and that this must come at the price of having their own, independent assessments and recommendations. The Executive Director for Operations described it to me by saying, "We were pretty much instructed to leave our brains at home."

Hearing of this event was a formative moment in leading me to conclude that the points of tension between the Chairman and the Commission were no longer isolated to the Commission itself. Interference in the flow of information coming to the Commission was occurring to such a pervasive extent and was being conducted so brazenly that the Commission needed to take additional action.

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I regret that we have come to this point. But our agency is one whose fundamental mission to ensure the health, safety, and security of the American public is premised on the very ability of individuals to speak out. It is my hope that a positive lesson about the willingness to speak out will be drawn by not just the NRC staff listening to this hearing, but by all those responsible for safety and security across our government.

Thank you.

Chairman ISSA. Thank you.
 Commissioner Magwood? If you could pull the mic just a little closer. They are not very good from a distance. Thank you.

STATEMENT OF WILLIAM D. MAGWOOD IV

Mr. MAGWOOD. Thank you, Chairman.

Chairman ISSA. Even better when they are turned on.

Mr. MAGWOOD. Yes.

Chairman Issa, Ranking Member Cummings, and members of the committee, it is with considerable disappointment that I appear before you today to share my concerns regarding the management and leadership issues facing the Nuclear Regulatory Commission.

I provided a written statement and ask that it be included in the record. So I will try and summarize my comments.

Chairman ISSA. Without objection, so ordered.

Mr. MAGWOOD. Let me begin by reassuring the public that the NRC staff has and continues to work diligently to carry out its responsibilities to protect the health, safety, and security of the American people. They are led by an excellent cadre of senior career managers who have done a fantastic job of insulating most of the staff from the serious problems that are the subject of this hearing.

My colleagues and I have endured a rather distasteful and dishonest media campaign over the last week. We have seen a wide range of misleading and untrue reports about our motivations, our characters, and our commitment to safety. It is quite clear that this campaign is intended to divert the attention of Congress and the public from the very real concerns we have about the leadership of our agency. I do not intend to allow this tactic to succeed.

However, one item I feel I must address concerns this Commission's commitment to safety. After 20 months of working with the people at this table, I can promise you that we all place the safety and security of the public we serve at the very top of our considerations. We do not always agree on how to achieve the goal of safety and we always do not view issues the same way, but I believe we are all equally committed to the same goal. To impugn the motivations of members of the Commission because of disagreements on strategy or approaches is irresponsible.

Now, as I discuss the real concerns facing us, I feel my true role before you today is to give voice to the dedicated men and women who serve the NRC, many of whom have come to me to discuss their concerns.

First, I am most concerned that the chairman has made a regular practice of interfering with the ability of the Commission to obtain information from the NRC staff. He has asserted the authority to decide what information is provided to the Commission, when it is provided, and, increasingly, what the information contains when it reaches the Commission. This behavior is contrary to both the letter and intent of the organization plan, and no Commissioner could confidently carry out his legal obligations under these conditions.

In my written statement, I outline a specific example in which the chairman prevented the staff from providing the Commission a voting paper regarding our program for fire protection in nuclear

power plants. He went as far as to send someone to break up a staff briefing being held for myself and another Commissioner. For the record, we did not allow the briefing to end.

It has become routine for individual members of the staff to come to Commissioners to alert us about issues they believe require Commission attention but that staff can't get through the chairman. That the Commission has come to rely on the personal bravery of individuals on the staff to keep us informed is a very sad statement. But what worries me most is the fact that we don't know what we don't know.

The second concern I raise is a growing cancer of a chilled work environment at the agency. As I outline in my written statement, I have observed the effects of this chilled environment firsthand, and I believe the situation is actually worse in recent months. And I think Commissioner Svinicki mentioned some of that.

I would like to move on to my final concern, however, which I raised, concerning the chairman's abusive behavior toward the staff. To understand this matter, I spoke with three of the women who have had personal experience with the chairman's extreme behavior. These women remain very disturbed by these experiences. A common reflection they all shared with me was, "I didn't deserve this." One woman said she felt the chairman was actually irritated with someone else but took it out on her. Another told me she was angry at herself for being brought to tears in front of male colleagues. A third described how she couldn't stop shaking after the experience. She sat, talking through what had happened to her, with a supervisor until she could calm down enough to drive home.

Senior female staff in an agency like the NRC are tough, smart women who have succeeded in a male-dominated environment. Enduring this type of abuse and being reduced to tears in front of colleagues and subordinates is a profoundly painful experience for them. The word one woman used was "humiliating." I must note that none of these women want to have their names used publicly. As another woman told me, "It is embarrassing enough that I went through this. I don't want to be dragged through the mud before some congressional committee."

These are major concerns facing the agency today: blocking staff from providing information to the Commission, the creation of a chilled work environment, and the abuse of NRC staff. I do not believe that fear, intimidation, and humiliation are acceptable leadership tactics in any organization, least of all in the Nuclear Regulatory Commission.

Thank you for your attention, and I stand ready to answer any of your questions.

[Prepared statement of Mr. Magwood follows:]

**Testimony of Nuclear Regulatory Commissioner William D. Magwood, IV
Committee on Oversight and Government Reform**

December 14, 2011

Chairman Issa, Ranking Member Cummings, and members of the Committee, it is with considerable disappointment that I appear before you today to provide my concerns regarding the serious management and leadership issues facing the Nuclear Regulatory Commission. This has been a very difficult time for our agency and I expect more difficult times are ahead. However, when I testified during my confirmation hearing before Chairman Boxer and the members of the Senate Committee on Environment and Public Works, I promised to always do the right thing even when the right thing isn't easy. Today I fulfill that promise.

In the 20 months that I have been with the NRC, I found it to be an agency that has a culture of excellence. Its 4000 person staff is highly motivated and singularly dedicated to the mission of protecting the health, safety, and security of the American people. The public should be assured that the staff has and continues to work diligently to carry out its responsibilities and is led by an excellent cadre of career managers who have done a fantastic job of insulating most of the staff from the serious problems that are the subject of this hearing.

My colleagues and I have endured a rather distasteful and dishonest media campaign over the last week. We have seen a wide range of misleading and untrue reports about our motivations, our characters, and our commitment to safety. It is quite clear that this campaign is intended to divert the attention of Congress and the public from the very real concerns we have about the leadership of our agency. I don't intend to allow this tactic to succeed.

However, one diversionary item I feel I must address concerns this Commission's commitment to safety. After 20 months of working with the people at this table, I can promise you that we place the safety and security of the public we serve at the very top of all our considerations. We do not always agree on how to achieve the goal of assuring safety and we do not always view the issues before our agency the same way. But I believe we are all equally committed to the same goal. To impugn the motivations of members of this Commission because of disagreements on strategy or approaches is irresponsible.

In the particular case of the Commission's response to Fukushima, the Commission is unified in its support for moving forward quickly and methodically to absorb the lessons of Fukushima into our regulatory infrastructure and has endorsed an approach consistent with staff's recommendations. Because of the approach devised by this Commission, our agency's response to Fukushima will be more comprehensive in its safety scope than would have been possible under the Chairman's original plan. Because of our approach, important technical issues such as the use of filtered vents, loss of ultimate heat sink, and the distribution of potassium iodide will now be evaluated. There has been no delay in our agency's response.

Again, the matter of this Commission's commitment to safety is a diversion from the true leadership issues facing the NRC. As I discuss these challenges, I feel that my true role before you today is to give voice to the dedicated men and women who serve with the NRC—many of whom have come to me to discuss their many concerns.

First, the Chairman has made a regular practice of interfering with the ability of the Commission to obtain information from the NRC staff. He has asserted the authority to decide what information is provided to the Commission, when it is provided, and increasingly, what the information contains when it reaches the Commission. This behavior is contrary to both the letter and the intent of the Reorganization Plan of 1980 and no commission could confidently carry out its legal obligations under these conditions.

A salient example from late last year involved a significant issue associated with fire protection at nuclear power plants. A member of the staff told me that the agency's approach to receive applications from industry to risk-inform fire protection programs at nuclear power plants wasn't going to work and that staff was working on a paper to request Commission direction on a revised strategy. Sometime later, I asked the Chairman what progress the staff had made regarding this paper. He told me there was no paper and that he didn't know what I was talking about.

Eventually, it became clear that staff's effort to provide information to the Commission had been thwarted by the Chairman. Despite the persistence of this serious issue facing an important safety program, the fact that there was a need to address the issue quickly, and the fact that the staff wanted to provide a paper, it became apparent that unless the Commission took action, it was not going to get a paper. In order to circumvent this obstruction, another commissioner and I requested a briefing from the staff to understand the details of the problem and what staff thought we should do about it.

Just before the briefing began, the Chairman dispatched a staff person to stop the discussion. Apparently, the Chairman had just seen a copy of the staff's briefing and didn't want the information presented. We refused to stop the briefing. Almost as soon as the briefing was over and we had the information we needed to move forward, the Chairman sent out an email indicating that he had suddenly decided to instruct staff to prepare a paper on fire protection. Thus the matter was finally resolved—though months later than necessary.

Today, it is routine for individual members of the staff to come to commissioners to alert us about issues they believe require Commission attention but that staff can't get through the Chairman. When members of the staff take this action, they believe they do so with no small risk. We receive documents, issue updates, and reports on the Chairman's orders through what has become an underground network of individuals who remain loyal to the normal functioning of the agency.

That the Commission has come to rely on the personal bravery of individuals on the staff to keep us informed is a very sad statement. But sadder still is the fact that when staff is not willing to take these risks, the Commission is sometimes left in the dark. This erodes my confidence that the agency is functioning as efficiently as it can or in a manner that is consistent with the principles rooted in the Reorganization Plan. But what worries me most is the fact that we don't know what we don't know.

The second concern I raise is the growing cancer of a chilled work environment at the NRC. I have spoken with members of the staff who have indicated that on multiple occasions, they have met with the Chairman and, upon presenting him with the results of their expert analysis on various issues, found that he was unhappy with the answers they provided. One person described such an encounter and stated that the Chairman became increasingly irrational and everyone in the meeting became very uncomfortable. Just as this particular meeting ended, the staff person said the Chairman ended the discussion ranting at the staff. "He just sort of snapped," this person told me. "It was like *The Exorcist*."

I have observed the effects of this chilled environment first-hand. For example, during a meeting with a member of the senior staff, I asked about a technical issue. This senior manager suddenly became extremely nervous and began to stammer—I can only describe it as a panic attack. It was a very awkward moment so I moved on to another subject. Later, I asked my staff to find out what led to this behavior. We were informed that this individual had provided the same information to another commissioner and, as a result, had been called up to see the Chairman. I met with him after whatever transpired in the Chairman's office.

I believe this situation has worsened in recent months. For example, members of the staff have reported to me that during October of this year, the Chairman met with them and posed the chilling question: "Are you on my team?" The people I talked to felt that it was quite clear that the wrong answer could have consequences.

The final major concern I raise pertains to the Chairman's abusive behavior toward the staff. I think of all the issues of leadership before us, I have found this aspect the most troubling. To understand this matter, I spoke with three of the women who have had personal experience with the Chairman's extreme behavior. In each case, the woman involved indicated that she had done nothing wrong or inappropriate, but something set the Chairman off and he launched into a raging verbal assault.

These women remain very disturbed by these experiences. A common reflection they all shared with me was "I didn't deserve this." One woman told me that she felt the Chairman was actually irritated with someone else, but took it out on her. Another said she was angry at herself for being brought to tears in front of male colleagues. A third described how she couldn't stop shaking after her experience. She sat, talking with her supervisor until she could calm down sufficiently to drive home.

The nature of these stories is all too familiar to me. In my past management roles, I had two occasions to deal with men who had subjected female staff to unacceptable verbal abuse. In both cases, I discovered that the female staff had been afraid to come forward and were deeply embarrassed by the whole business. But the stories came out and I was faced with a management decision.

In both cases, the men involved were vital members of my senior management staff. I knew that it would be difficult, if not impossible, to replace them. Nevertheless, I found their misogynistic behavior entirely unacceptable and personally offensive. I immediately removed them from their supervisory roles and relocated them away from the staffs they once led. Had I been able, I would have fired both on the spot.

Senior female staff at an agency like NRC are smart, tough women who have succeeded in a male-dominated environment. Enduring this type of abuse and being reduced to tears in front of colleagues and subordinates is a profoundly painful experience for them. The word one woman has used is "humiliated." I must note that none of these women want to have their names used publicly. As another woman told me, "it's embarrassing enough that I went through this, I don't want to be dragged through the mud before some Congressional committee."

These are the major concerns facing the NRC today: blocking staff from providing information to the Commission; the creation of a chilled work environment; and the abuse of staff. I do not believe that fear, intimidation, and humiliation are acceptable leadership tactics in any organization, least of all the Nuclear Regulatory Commission.

Thank you for your attention and I stand ready to answer any of your questions.

Chairman ISSA. I thank you.
Commissioner?

STATEMENT OF WILLIAM C. OSTENDORFF

Mr. OSTENDORFF. Thank you, Chairman, Ranking Member Cummings, members of the committee, for the chance to be here before you today.

I have served on this independent commission since April 2010. During that time, I have come to better appreciate the reputation the NRC has historically enjoyed as a competent regulator and a leader in nuclear safety not only in the United States but also in the international community. The reputation can be attributed to the employees of the NRC, who have shown dedication to the safety mission and the NRC's organizational values of integrity, service, openness, commitment, cooperation, excellence, and respect.

For decades, these values have served as a guide for the operations of the NRC staff as well as for the Commission. These values have also historically fostered an open and collaborative workplace that brings out the best regulatory and technical judgments of the NRC staff without undue influence or pressure.

Unfortunately, we find ourselves today in an environment where those historical values have been compromised and the agency's reputation placed at great risk. Left uncorrected, this trend damages the ability of the NRC staff and the Commission to carry out its nuclear safety mission for this country.

I have over 30 years of service to this country. As a Rickover-era nuclear-trained submarine officer, I served on six submarines, I commanded a nuclear attack submarine for 3 years, had subsequent command of an attack submarine squadron of eight submarines. I have been personally accountable to the United States Government—the White House, Department of Defense—for ensuring the safety of nuclear-powered warships. I take great pride in that service and in my own decision-making with respect to those principles that best ensure reactor safety.

After retiring from the Navy in 2002, I worked upstairs in the House Armed Services Committee as a counsel with oversight responsibility for atomic energy activities at the Department of Energy. Subsequent to that, I spent 2 years as a senior official at the Department of Energy and now with the NRC.

With significant experience in leadership positions dealing with nuclear oversight, whether it be nuclear weapons or nuclear power, I can honestly say to this committee that I have never seen an environment where the highest level of the organization does not reflect the values shared by the whole.

Along with the three of my Commissioner colleagues who signed the letter of October 13th, who took the same oath to, quote, "well and faithfully discharge the duties," unquote, of our office, I refused to be silent while damage was being done to the NRC's work environment.

It is important to comment briefly on what I will label as an unprecedented action—the four of us writing a letter to the White House. That is the letter this committee received last Thursday evening.

This letter is not about politics. It was signed by two Democratic and two Republican members of this Commission. I regret that that letter has been portrayed by many in Congress over the last 3 or 4 days as being politically motivated. I assure this committee, it is not. It is not Yucca Mountain, it is not about other policy disagreements. It is not about internal conflict between Commissioners, though that is one element of our concerns. With great respect for the White House, I must take strong exception to White House Chief of Staff Daley's letter from Monday night that I believe mischaracterized the situation of the Commission.

What is this letter about? This letter is about management actions that have significantly eroded the prized open and collaborative working environment of the NRC, our Nation's nuclear safety agency. These actions have served to prevent the Commission from being fully informed of the NRC staff's views and recommendations.

It is about behavior that if exhibited by one of our NRC's regulated licensees would be subject to investigation and potential enforcement action for a chilled work environment. It is about bullying and intimidating behavior toward NRC career staff that should not and cannot be tolerated.

In light of our unanimous agreement that these actions cannot continue, the four of us fulfilled our oath of office and took what we viewed as appropriate action and wrote the White House. That letter clearly states our grave concerns.

I appreciate this committee's oversight role and look forward to your questions.

[Prepared statement of Mr. Ostendorff follows:]

**Statement of Commissioner William C. Ostendorff
U.S. Nuclear Regulatory Commission
Before the House Committee on Oversight and Government Reform**

December 14, 2011

Thank you Chairman, Ranking Member Cummings, and Members of the Committee for this opportunity to appear before you today.

I have served on this independent regulatory Commission since April of 2010. In that time, I have come to better appreciate the reputation the NRC has historically enjoyed as a competent regulator and a leader in nuclear safety not only in the United States, but also in the international nuclear community. That reputation can be attributed to the employees of the NRC, who have shown dedication to the safety mission and the NRC's organizational values of integrity, service, openness, commitment, cooperation, excellence, and respect. For decades, these values have served as a guide for the operations of the NRC staff, as well as the Commission. These values have also historically fostered an open and collaborative workplace that brings out the best regulatory and technical judgments of the NRC staff without undue influence or pressure.

Unfortunately, we find ourselves today in an environment where those historical values have been compromised and the agency's reputation placed at risk. Left uncorrected, this trend damages the ability of the NRC staff and the Commission to carry out its nuclear safety mission.

I have over thirty years of service to this country. As a Rickover era career naval officer, I served on six nuclear submarines and commanded a nuclear powered attack submarine for three years. I had subsequent command of a squadron of 8 nuclear attack submarines. I have been personally accountable to the United States for ensuring nuclear reactor safety on our nuclear powered warships for years. Hence, I take great pride in that service and in my own decision-making with respect to the principles that best ensure reactor safety. After retiring from the Navy in 2002, I served in government as a counsel with the House Armed Services Committee professional staff, as a senior official with nuclear oversight responsibilities for the Department of Energy and now with the NRC.

With significant experience in a number of leadership positions dealing with nuclear power and nuclear weapons, I can honestly say that I have never seen an environment where the highest level of the organization does not reflect the values shared by the whole. Along with three of my Commissioner colleagues who took the same oath to "well and faithfully discharge the duties" of our office, I refused to be silent while damage was being done to the NRC's work environment.

It is important to comment on what I will label as an "unprecedented action"-the four of us writing the letter to the White House two months ago-the letter that this Committee received last Thursday evening.

This letter is not about politics (it was signed by two Democratic and two Republican members of the Commission). I regret that our letter is being portrayed by some members of Congress as politically motivated. It is not. It is not about Yucca Mountain. It is not about internal conflict between Commissioners.

Rather, this letter is about management actions that have significantly eroded the prized open and collaborative work environment of our nation's nuclear safety agency. These actions have served to prevent the Commission from being fully informed of the NRC staff's views and recommendations. It is about behavior that if exhibited by one of the NRC's regulated licensees, would be subject to investigation and potential enforcement action for a chilled work environment.

It is about bullying and intimidating behavior towards NRC career staff that should not and cannot be tolerated. And finally, it is about a leadership and management style that attempts to undermine the Commission and has damaged the agency.

In light of our unanimous agreement that these actions cannot continue, the four of us fulfilled our oath of office to take what we viewed as appropriate action. Hence, our letter clearly and unequivocally states our grave concerns to the White House.

I appreciate the Committee's oversight role and the serious nature of this hearing. I look forward to your questions.

Chairman ISSA. Thank you.
Commissioner?

STATEMENT OF GEORGE APOSTOLAKIS

Mr. APOSTOLAKIS. Chairman Issa, Ranking Member Cummings, and members of the committee, good morning.

Management and operation of the Nuclear Regulatory Commission is an important subject. My perspective is grounded in my experience and observations as a member of the Commission since being sworn in on April 23, 2010, and my former role as a 15-year member and chairman for 2 years of the Advisory Committee on Reactor Safeguards, a statutory committee of technical experts.

Management and operation of the Commission are carried out within an overall structure of law and policy. The Commission's independent and multimember character, with staggered terms for its members, is designed to insulate regulatory decisions from political consideration and to provide stability for regulatory policy. Nuclear safety matters are technically complex. This Commission structure allows for a diversity of insights to be brought to bear in the Commission's decision-making.

Under Reorganization Plan No. 1 of 1980, the Commission as a whole formulates policy and regulations, issues orders, and conducts adjudication. Policy formulation includes major administrative decisions with policy implications. The Commission has ultimate authority to determine by a majority vote in an area of doubt whether any matter, action, question, or area of inquiry pertains to one of these functions. The Senate Committee on Governmental Affairs, in reporting on the reorganization plan, declared that, quote, "The committee also intends the Commission to exercise the authority to interpret the plan," end quote.

The legislative history of the plan and the Presidential messages to Congress in submitting the plan emphasize that the chairman is subject to the policies of the Commission and the oversight authority of the Commission. As principal executive officer of the Commission, the chairman has the ultimate responsibility to the Commission and the public for the proper day-to-day management and administration of the agency. However, the chairman is statutorily responsible to the Commission for assuring that the executive director of operations and the staff are responsive to the requirements of the Commission in the performance of its functions.

The 1980 reorganization plan also provides that the heads of the offices of the general counsel, the Secretary of the Commission, and the Advisory Committee on Reactor Safeguards shall continue to report directly to the Commission.

The chairman and the executive director, through the chairman, are responsible for ensuring that the Commission is fully and currently informed about matters within the Commission's functions. The reporting relationship of the executive director to the chairman is not intended to interfere with the ability of the EDO to make independent recommendations on matters that the Commission has delegated to him. While the chairman has special responsibility for policy planning and development for the Commission, the Commission could not function in any satisfactory way if the executive di-

rector or other senior managers were required to misrepresent or suppress their views or analyses.

The Commission is well served by its dedicated staff, with many senior managers who bring long experience and advanced technical expertise. Their technical evaluations essential to informed Commission decision-making. The transmission of adequate information and unbiased perspectives to the Commission for its decision-making and oversight is essential to the agency's mission of protecting public health and safety.

I joined my fellow Commissioners to formally express our serious concerns regarding the chairman's leadership. I regret that partisan or other ill motives have been ascribed to the action that we have taken. This could not be further from the truth.

Thank you very much.

[Prepared statement of Mr. Apostolakis follows:]

Testimony of Commissioner George Apostolakis
Before the House Committee on Oversight and Government Reform

December 14, 2011

Chairman Issa, Ranking Member Cummings, and members of the Committee, good morning. Management and operation of the United States Nuclear Regulatory Commission is an important subject. My perspective is grounded in my experience and observations as a member of the Commission since being sworn in on April 23, 2010, and my former role as a 15-year member and Chairman, for two years, of the Advisory Committee on Reactor Safeguards, a statutory Committee of technical experts.

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Under Reorganization Plan No. 1 of 1980, the Commission as a whole formulates policy and regulations, issues orders, and conducts adjudication. Policy formulation includes major administrative decisions with policy implications. The Commission has ultimate authority to determine, by majority vote in an area of doubt, whether any matter, action, question or area of inquiry pertains to one of these functions. The Senate Committee on Governmental Affairs, in reporting on the Reorganization Plan, declared that "The Committee also intends the Commission to exercise the authority to interpret the Plan." The legislative history of the Plan and the Presidential messages to Congress in submitting the plan emphasize that the Chairman is subject to the policies of the Commission and the oversight authority of the Commission.

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I joined my fellow commissioners to formally express our serious concerns regarding the Chairman's leadership. I regret that partisan or other ill motives have been ascribed to the action that we have taken. This could not be further from the truth.

Thank you.

Chairman ISSA. Thank you.

I would like to thank all of you for staying well under the 5 minutes. And, again, all of your full written statements are, by committee rule, going to be in the record.

I will recognize myself for 5 minutes.

Chairman, who is your board of directors? For the people out there in, sort of—you know, they don't know government necessarily, what is the equivalent of your board of directors? Who do you report to?

Mr. JACZKO. Well, I would say it is—I am responsible, as the chairman of the Commission, to carrying out the policies that the Commission as a whole—

Chairman ISSA. Well, no, I appreciate that, but are you the CEO, in your opinion?

Mr. JACZKO. I believe the statute describes the chairman as a principal executive. So that would probably be the closest—

Chairman ISSA. So you view yourself as the chief executive officer—

Mr. JACZKO. Right.

Chairman ISSA. —the chairman. Who is your board of directors?

Mr. JACZKO. I would say it is probably a combination of the Commission but the Congress, as well, I think serves a role in its oversight capacity to oversee the operation—

Chairman ISSA. Do these gentlemen and lady sitting next to you, are they your board?

Mr. JACZKO. I think, yeah, that is certainly one way to characterize the Commission as a structure that way, that they are responsible for establishing the policies of the agency, as I am a member of that as well.

Chairman ISSA. Right, but if one of these four other members asks for a vote on something and four of them vote that what you are doing is wrong, do you consider that to be persuasive, interesting, or obligatory?

Mr. JACZKO. Well, certainly, if the Commission takes an action—and we have formal procedures to carry on our actions—then, of course, those are actions that I would follow.

Chairman ISSA. So, if they ask to vote, not to be locked out of getting information, as has been alleged under oath here, would you consider that that was your responsibility, to ensure that they had full access to information and never again were in any way denied any information that you had?

Mr. JACZKO. Yeah, I believe the Commission has provided a tremendous amount of information—

Chairman ISSA. No, no, no. Chairman, we are real funny about this here; we want the answer exactly to the question we asked.

Is it true that any information that you had has ever been withheld from any of these people on your request?

Mr. JACZKO. Not that I am aware of.

Chairman ISSA. So you have never asked to have any information—so, basically, one of the Commissioners just lied under oath is what you are saying.

Mr. JACZKO. Well, I work every day to ensure that the Commission has the information it needs to carry out its responsibilities—

Chairman ISSA. No, no, no, not what it needs. If I understand the statute, they have full and unfettered, just as you do, rights to everything because they determine, as I understand it, as any Commission would—and we produce commissions here all the time—they have to have everything or at least everything they think they have. And what they don't know they have a right to ask and know whether they really need to know it. Isn't that true?

Mr. JACZKO. Absolutely. And the Commission routinely asks for information, and that information is provided.

Chairman ISSA. Okay. Well, obviously, they disagree with you a little bit.

You have a background—you are a physicist, not in nuclear but in interesting stuff that I don't know anything about, so I will just figure you are smarter than me on anything related to the science. But have you ever run an organization of 4,000 people?

Mr. JACZKO. No. This is the first time that I have done that.

Chairman ISSA. What is the largest organization in which you were the CEO of in your career?

Mr. JACZKO. Well, I was responsible for managing my personal staff as a Commissioner, and prior to that I served in policy capacities.

Chairman ISSA. So, half a dozen or something like that.

Mr. JACZKO. Yeah.

Chairman ISSA. Okay.

Commissioner Ostendorff, as a Navy captain, how many people worked for you?

Mr. OSTENDORFF. Chairman, I had several different jobs in the Navy. As a commanding officer of a submarine, I had 150 people; as the commanding officer of a nuclear attack submarine squadron, 1,200. As principal deputy administrator at NSA, I was a chief operating officer for 2,500 personnel who were Feds and 32,000 people who were management and operating contractors.

Chairman ISSA. And from your leadership training over 30 years, from your years in the Navy, an autocratic organization, an organization in which you can go to jail for not obeying the lawful order of the ship's captain, you have said, signing on with the other Commissioners, that this chairman has exceeded any semblance of the kind of authority that you believe he should have in his conduct; that he has had conduct, if I understand correctly, that does—and I know there is some debate about this—that does endanger safety because it is conduct that is demoralizing to an organization that, in fact, if my nuclear power plants in my district, if they had somebody like Chairman Jaczko is alleged to be, you would shut down that site. You would view them as dysfunctional enough to be unsafe.

Isn't that true?

Mr. OSTENDORFF. I would say, Chairman, that I think, if I understand your question correctly, that I do not believe that we have been kept fully informed of our staff's views, their technical analysis, their recommendations on more than one issue here in the last few months that directly could impact how we proceed with respect to the Fukushima reactor accident.

Chairman ISSA. And I would ask unanimous consent for 30 more seconds to have Commissioner Magwood, who I think talked on the same subject, if he has anything to say.

Mr. MAGWOOD. No, I think I would just simply add that there are clearly cases where my office has asked for information and been told we couldn't have it. And it is just very black and white to me.

Chairman ISSA. So the chairman was less than truthful in saying that he has provided you information you requested always.

Mr. MAGWOOD. Well, I don't want to sit here and say that someone is not telling the truth. I just simply will tell what my experience has been.

Chairman ISSA. Thank you.

The gentleman from Maryland, the ranking member, is recognized for 5 minutes—or, actually, make that 6, please.

Mr. CUMMINGS. Thanks.

Commissioner Svinicki, first of all, I want to thank you for—I want to thank all of you for your testimony.

You know, I am just sitting here and I am just wondering what is going to happen after you go back. You know, we have no—we are not experts up here on, you know, dysfunction. The country, at 80 percent, says the Congress isn't functioning very well at all. So I don't want to sit here and tell you how to conduct your business.

But I am concerned about some of the statements that have been made, particularly, Chairman Jaczko, with women feeling intimidated. That alarms me, as the father of two daughters. It does concern me.

I want you to address that, please.

Mr. JACZKO. Well, I—

Mr. CUMMINGS. And how do you feel about that? Is it true? I mean, do you think that is true?

Mr. JACZKO. I am very passionate about safety, and all the things that I do at the agency are directed toward doing what I think is the right thing for safety.

I—when I heard the incident—about the incident that I believe Commissioner Svinicki is referring to, I tried to think through all the many meetings we had together where we had had very good discussions, sometimes disagreements about policy issues, and I believe there is one meeting that she may have been referring to. As I recall the meeting, I went to her office to speak with her about a letter, I believe it was. At a certain point, we were discussing it, and she became concerned. And I—as I recall, I simply motioned, I said, just sit down, let's just calm down and let's just work through it. We continued to discuss it, and then at some point I left.

Mr. CUMMINGS. Is this a situation, when you all go back—I mean, you have apologized, have you not?

Mr. JACZKO. Certainly, if any—many of these instances, I—this is the first time I have heard many of these accusations. And, certainly, if there has ever been a time when I have made someone feel uncomfortable, I always like to know so that I can take whatever action is necessary to remedy that.

Mr. CUMMINGS. Yeah.

Commissioner Svinicki, you testified before the Senate Committee on Environment and Public Works that you were never told that the chairman was operating under his emergency authority until the NRC Office of Congressional Affairs informed the Senate.

Do you remember exactly when that was? And how far after the earthquake and the tsunami did you find out?

Ms. SVINICKI. I—I don't recall the specific time period.

If I recall the question that was posed before the Senate committee, I think it was, was I informed that the chairman had invoked his emergency authorities under Section 3(a), so it was a very specific question about invocation of a provision of law. And I indicated that I learned of that when the Office of Congressional Affairs responded to a committee request.

I don't recall how many months after the Fukushima event that was, sir.

Mr. CUMMINGS. Well, our committee staff conducted a transcribed interview with the NRC general counsel, who took a different view, and this is what he said. He said, "I have heard testimony that they were not informed that the chairman was exercising his emergency power. However, the Commissioners all were informed that the operations center had gone into this monitoring mode soon after the Fukushima earthquake—and, actually, the beginning concerns for the reactors—Fukushima reactors that had occurred. That Saturday, March 12th, I sat in on a conference call in which the chairman told each of the Commissioners—I believe each one of them was on the conference call—was explaining what was going on with respect to the reactor."

Commissioner, were you on that call?

Ms. SVINICKI. I was, sir. And if I may say that the general counsel's response indicated that we were informed the agency was in the monitoring mode. The difference or the misunderstanding is that, in my view, that does not correlate directly to invocation of emergency authorities. The agency going into the monitoring mode does not necessarily invoke those emergency authorities under law.

Mr. CUMMINGS. And it seems fairly obvious that if the Commission was operating an emergency operations center, the Commission was responding to an emergency. That is not—do you disagree with that?

Ms. SVINICKI. The agency has numerous times gone into the monitoring mode where the chairman of the agency has not invoked the emergency authorities. So I do not correlate being notified of being in the monitoring mode as an immediate invocation of those authorities, sir.

Mr. CUMMINGS. Okay. But you are—but there was an emergency operation; is that right? I know that I am—

Ms. SVINICKI. Yes. And other than the term being the same, again—and I apologize if my answer is complicated—it is simply that the agency going into a monitoring mode does not necessarily correlate or immediately invoke those emergency authorities.

Mr. CUMMINGS. So is your main objection that you did not receive some sort of a paper stating explicitly, "Oh, by the way, we are having an emergency"? Is that a fair statement?

Ms. SVINICKI. The significance to me of the invocation of the emergency authorities is that, under the reorganization plan, at

that point the chairman has taken the authorities of the Commission as a whole, and then in an emergency he is able to exercise singularly the authorities of the Commission as a body. So I do see a distinction.

Mr. CUMMINGS. Well, perhaps, Chairman Jaczko, could you clear that up? When did you inform them that we were operating under the emergency provisions?

Mr. JACZKO. Well, the first action was very early on on March 11th at about 9:43 in the morning. I believe one of my staff members indicated to their staff that we were entering monitoring mode. About 20 minutes later, a formal agency email went out.

I then, later that evening—and this is all on the first day, March 11th—sent an email to my colleagues informing them that we were in monitoring mode and talked about our response and what we were doing to the accident.

From that point on, we had meetings at least three times a day, where their staff were briefed by members of the operations center about our activities and our status. I held, approximately once a day and starting on March 12th, briefing phone calls with them to describe our actions and indicate what we were doing as an agency to respond to the emergency.

Mr. CUMMINGS. I see my time has expired. Thank you.

Chairman ISSA. I thank the gentleman.

We will now go to the chairman of the subcommittee, Mr. Jordan, for 5 minutes.

Mr. JORDAN. I thank the chairman.

Let me start with Mr. Ostendorff. On October 13th, you all sent a letter to the White House chief of staff. That seems pretty unprecedented to me, that you would have two Democrats, two Republicans on a commission send a letter to the chief of staff of the White House about the activities of the chairman of this Commission.

Do you know if there are any other examples of that happening, other commissions where the same kind of action was taken, a letter sent to the White House chief of staff?

Mr. OSTENDORFF. Mr. Jordan, I agree it is an unprecedented action. I am not aware of any other similar situation.

Mr. JORDAN. So you guys knew that this was something that had not been done before, this was pretty unprecedented.

Mr. OSTENDORFF. I think the four of us were not aware of any circumstance in which a similar action was taken by independent regulatory commission members.

Mr. JORDAN. And my guess is you had several discussions amongst the four of you about taking this unprecedented action. Can you elaborate on that? Was there a time frame where over a period of months, maybe even longer, where weeks or months or longer you talked about taking this unprecedented action?

Mr. OSTENDORFF. We've had significant concerns for a number of months, and this was the committee's report that's in our letter to the White House concern on withdrawal of the SECY paper back in July, associated with staff recommendations on how the Fukushima report should be evaluated and prioritized by our staff.

That paper was withdrawn by the chairman. It caused significant concern among the four of us. We discussed our concerns with

the chairman. We saw attempts to remove the executive director for operations, the EDO, which is a significant personnel step to remove the senior career person in the agency.

Mr. JORDAN. Yes.

Mr. OSTENDORFF. We saw the October 5 meeting that Commissioner Svinicki referred to where the chairman made statements to senior executives in our agency that appeared to undermine the commission. That was the crossing line for, at least from my own standpoint, and I think my colleagues, and I asked them agreed and that was what—

Mr. JORDAN. Safe to say, well thought out, over a period of time, discussed thoroughly, and you said that the situation warrants us taking this unprecedented action?

Mr. OSTENDORFF. We had seen that our attempts to talk to the chairman about our concerns on various matters had not yielded any difference in behavior or actions on his part. We felt that as a commission, we had an obligation to the United States to do this.

Mr. JORDAN. And can I go down the line, Commissioner, with each of you? Would you agree with the assessment given by Mr. Ostendorff?

Ms. SVINICKI. Yes, sir, I would. And I would add that we had engaged, as I said, in protracted efforts to attempt, through our own procedures, to try to resolve some of these issues that had not borne any fruit.

Mr. JORDAN. Commissioner Magwood, accurate?

Mr. MAGWOOD. Yes, very accurate.

Mr. JORDAN. And Commissioner Apostolakis?

Mr. APOSTOLAKIS. Yes, it is accurate.

Mr. JORDAN. And, Mr. Ostendorff, we have a chart here in our material of the five Commissioners, the professional staff, this chart here was, I'm guessing, maybe 30 different folks here, and obviously you can't testify for them, but is it fair to say that the staff that's on this page had real concerns about the leadership style of Mr. Jaczko? This was part of your assessment and the evaluation before you sent the correspondence, the letter to the chief of staff?

Mr. OSTENDORFF. Mr. Jordan, I can tell that you that prior to signing the letter, I think, I will speak for myself, but I think my other three colleagues would say the same thing, that we had significant feedback from the senior career leadership of the agency expressing great concerns on there being a chilled environment, a lack of open and collaborative work environment in their interface with the chairman.

Mr. JORDAN. Okay, and just one question for you and the same question of the other Commissioners.

You stated in your testimony that it bothers you that some are alleging that the action that the four of you have taken are somehow politically motivated. I think it's certainly a stretch in the fact that it's two Democrats to a Republican, but I want to ask, do you think the actions of the chairman have been politically motivated, his style of leadership, what he is doing, do you think those are politically driven?

Mr. OSTENDORFF. That's a difficult question, Mr. Jordan. I personally can't tell that you I think his actions are politically moti-

vated. I have no evidence that they are. I will just tell that you we have seen significant issues under his leadership and management that we think are unacceptable.

Mr. JORDAN. Commissioner Svinicki, I'm sorry. I think I did a better job on the name than the chairman, but I'm sure I got it wrong. Go ahead.

Ms. SVINICKI. I will not testify to political motivations of Chairman Jaczko. I would describe my motivation in signing that letter was more on the basic conduct issues.

Mr. JORDAN. Okay, okay, fair enough. Mr. Magwood.

Mr. MAGWOOD. I think I would answer the question the same way and would not describe political motivations.

Mr. JORDAN. Okay.

Mr. APOSTOLAKIS. My motivation was not political.

Mr. JORDAN. I understand that. Do you think the chairman's was.

Mr. APOSTOLAKIS. I have no evidence that it was. I think it's more his interpretation of his role as a chairman that was driving his actions.

Mr. JORDAN. Thank you. Thank you, Mr. Chairman.

Chairman ISSA. Thank you. We now recognize the ranking member of the subcommittee, Mr. Kucinich, for 5 minutes.

Mr. KUCINICH. Thank you very much, Mr. Chairman, members of the committee, I want to quote from an article on Politico today on their front page. It says, "Behind closed doors, they snipe at each other. In public, they question each other's motives. And in front of Congress they hang each other out to dry."

That's life on the Federal Election Commission, not the NRC, but the FEC.

I would imagine that if we called up one Commission after another in front of this Congress, you'd probably have some complaints that may not be dissimilar than what we have here. The difference is, though, that 104 nuclear power plants in various stages of relicensing, some of which have some questions related to safety, post-Fukushima 7 months ago, March 11, 2011, or May 11, 2011. I'm, frankly, you know, wondering why you're here. I appreciate the chairman calling the hearing, this is all very interesting.

Mr. JORDAN. Will the gentleman yield?

Mr. KUCINICH. I would certainly yield.

Mr. JORDAN. Well, I would just make one point that I made in my remarks, the one big difference is, I'm sure you have some of those actions taking place inside the FEC, but no Commission has taken the unprecedented action of having four members sign a letter and send it to the White House chief of staff. That's the difference and that's why the chairman has called this hearing.

Mr. KUCINICH. Well, you know, I thank the chairman for calling the hearing and I thank my friend for pointing that out. But I also think that it's important for us to look beyond what we see and consider that, you know, we have an industry that's in trouble. Wall Street won't invest in nuclear power. The nuclear industry came to this government and looked for a \$60 billion-plus loan guarantee. The industry's in trouble.

So the Commissioners are going to reflect what's going on in the industry. I mean, I would expect that's what's happening here, and

that's why we need to look deeper into what we're hearing about the NRC and ask what's going on with the industry, what do the titans of the industry have to say about the chairman?

Now, Mr. Jaczko, an Associated Press story reported that you were worried that the U.S. nuclear plant operators may have become complacent following the disaster in Japan. And according to a press account, you said that recent instances of human error and other problems have threatened the safety of some of the Nation's nuclear facilities. It was reported, for example, that incidents at nuclear plants in Ohio and Nebraska, "almost led to workers getting very, very significant doses" of radiation.

The article also reports that in addition to these events, three other plants were shut down for safety reasons. This apparently marks the first time in more than a decade that several plants in the U.S. have been shut down at the same time.

Can you elaborate, Mr. Chairman, on some of these specific events that have occurred recently and which ones trouble you the most and why?

Mr. JACZKO. Well, Congressman, the events in particular with the potential worker exposures were, in my mind, very significant events because they appear to indicate a lack of adherence to procedures. And after I made those comments, I heard from industry officials, and while they may have not necessarily agreed with my assessment of complacency, they did acknowledge that there is a change in the workforce right now in the nuclear industry, there is new workers, and we are seeing some of these incidents in which the new workers may not have a full appreciation of the procedures and the need for adherence to certain processes that ultimately ensure safety.

So it's an important signal. It's not clear yet that we're seeing a true decline in safety, but it's an important signal that we need to make sure we keep a close eye on as the year goes on and as we continue our oversight of these plants.

Mr. KUCINICH. Is safety your top concern?

Mr. JACZKO. Safety has been my number one priority since I came to the Commission.

Mr. KUCINICH. And after Fukushima, what went on in your mind about safety and nuclear power plants in this country?

Mr. JACZKO. Well, first and foremost, I was proud of the staff at the NRC, that we have worked very hard for a long time to be focused on safety, but that accident, I think, really reminded us that there is no way to rule out accidents, there is no way to prevent, ultimately, all kinds of serious incidents, so we have to be even more vigilant and dedicated to safety than we've ever been.

Mr. KUCINICH. Thank you, Mr. Chairman. My time has expired. I ask unanimous consent to place in the record a staff report called Regulatory Meltdown.

Chairman ISSA. Whose staff report?

Mr. KUCINICH. A staff report by Mr. Markey.

Chairman ISSA. I'll reserve, but only for a very short period of time, because it is another committee's report.

Mr. KUCINICH. Well, I would appreciate your——

Chairman ISSA. It will only take a couple of minutes for staff to review it.

Mr. KUCINICH. Thank you.

Chairman ISSA. We recognize the gentleman from Utah, a State that gives us uranium, for 5 minutes.

Mr. CHAFFETZ. Thank you, Mr. Chairman, and thank you for holding this hearing.

Chairman Jaczko, you are undoubtedly aware of the letter that was sent to the White House to the Chief of Staff dated October 13, 2011. There's five very serious charges in there. Number one, intimidating and bullying senior career staff. True or false?

Mr. JACZKO. I have not bullied and intimidated career staff.

Mr. CHAFFETZ. True or false, ordered staff to withhold their modified policy information and recommendations intended for transmission to the Commission?

Mr. JACZKO. There is one occasion which I discussed with a very senior manager, a recommendation that he wanted to make on an issue.

Mr. CHAFFETZ. So only one time in the history of your time there?

Mr. JACZKO. Correct. And I have—

Mr. CHAFFETZ. Next one, true or false, attempted to intimidate the Advisory Committee on Reactor Safeguards, a legislative—anyway, it goes on, true or false?

Mr. JACZKO. False.

Mr. CHAFFETZ. True or false, ignored the will of the majority of the Commission contrary to the statutory functions of the Commission?

Mr. JACZKO. I have never ignored the will of the Commission in an area that is a commission—

Mr. CHAFFETZ. I will take that as a false. True or false, interacted with us, his fellow Commissioners, with such intemperance and disrespect that the Commission no longer functions as effectively as it should?

Mr. JACZKO. Well, I'm—I'm a very passionate person about safety. And I often engage my colleagues in discussions about safety. And that's been my style and my practice.

Mr. CHAFFETZ. So, in other words, in other words, they're all wrong, and you're exactly right.

Mr. JACZKO. I've listened very carefully to the concerns of my colleagues.

Mr. CHAFFETZ. And you've done nothing wrong?

Mr. JACZKO. I have listened very carefully to the concerns of my colleagues, and I'm certainly very interested in continuing the dialogue with them to better understand how we are not communicating effectively.

And, in fact, as I believe Mr.—

Mr. CHAFFETZ. Let me continue, my time is short and I appreciate that, but it doesn't seem like any sort of repentance or concern for this.

Now, are you telling me that the—there was an Office of the Inspector General did a report dated June 6, 2011, page 44, and I'm extracting a quote out of it a portion of a sentence, "He strategically provided three of the four Commissioners with varying amounts of information."

Would you disagree with that?

Mr. JACZKO. Well, the Inspector General found ultimately that my actions were consistent with the law, they were consistent with Commission policy.

Mr. CHAFFETZ. But do you agree or disagree with the Inspector General, who is an independent person, who came in and looked at this and said you gave people varying amounts of information?

Mr. JACZKO. I disagree with that assessment.

Mr. CHAFFETZ. Mr. Chairman, I've got to tell you, and to my colleagues on the other side, we talk about the safety, the security of this Nation, the importance of the nuclear situation in this country, this should be bipartisan. The Commission is bipartisan. We've got people who are suffering under this gentleman right here. He is not living up to the duties.

I don't believe you. I think the safety and security of this Nation is too important. I think you should resign. I believe in these Commissioners, and God bless you for the job that you're doing and for stepping up and telling it like it is.

Mr. TIERNEY. Will the gentleman yield?

Mr. CHAFFETZ. I will not, I will not. It is too important to get this right. I find it very hard to believe that the distinguished careers of two Democrats, two Republicans, the host of staff that stands behind it and an the Inspector General that goes out and looks at this, and you're telling me, they're all wrong and you're right. That, to me, is a lack of leadership, and I hope—I hope that there's some sort of change, and if you're going to do the right thing for your country and for this Commission, you should step down. I yield back.

Mr. TIERNEY. Will about the gentleman yield?

Chairman ISSA. Will the gentleman yield?

Mr. CHAFFETZ. Yes.

Chairman ISSA. I recognize that there could be disagreement on this, but I do have the basic question for you: In light of this accusation, do you believe, chairman, that you need to make changes in your management and style and how you deal with your Commissioners and how you keep them informed?

Mr. JACZKO. Well, certainly, I'm very interested in improving the communication among the five of us.

Chairman ISSA. And if you had to do it again, would you have invoked emergency powers without consultation with this Commission?

Mr. JACZKO. All the actions that I took in regard to the 50 mile, or the Japan response in general, I'm very comfortable with.

Chairman ISSA. Okay, so you're comfortable with an event on the other side of the world, taking away these people's rights to have full and complete access and a vote, you're comfortable doing that without consultation even though, in fact, it was no direct threat to the United States, and they were available? You're comfortable with not consulting with them?

Mr. JACZKO. The——

Chairman ISSA. Okay, that says it all.

Mr. TIERNEY. Will the gentleman yield?

Chairman ISSA. Actually the time has expired.

Mr. TIERNEY. Isn't that interesting?

Chairman ISSA. The time has expired. No, no. Did you finish answering? No, no, no, no, I didn't cut him off. If you have further to answer you are welcome.

Mr. JACZKO. I wasn't sure if you were asking me a question or if you wanted a response.

Chairman ISSA. Well, I asked you if you were comfortable, on the gentleman's time, I asked you if were comfortable with not consulting, and you said you were comfortable with not consulting. You were comfortable with what you did when, in fact, it was pretty extraordinary and it was an event on the other side of the world and these lady and gentlemen were available, and yet they didn't even seem to know that their powers had been usurped so that you could run the show even though none—you're not a nuclear engineer and several of these people are.

So are you still comfortable with that?

Mr. JACZKO. Well, I am very comfortable with the actions that we took as an agency, and I did provide tremendous amounts of information to my colleagues, including personally briefing them about the status of our response and the issues that we were looking at. Their staff was fully aware in multiple briefings that they were provided, sometimes up to four times a day, on all of the issues that we were looking at. And, again, when we're in an emergency situation like this, the authorities are transferred to the chairman in order to assure effective and timely decisionmaking. And the events in Japan, I think, demonstrated that that was the appropriate way to respond.

Chairman ISSA. I now recognize the gentleman from Massachusetts for 5 minutes.

Mr. TIERNEY. Thank you. And just a comment to my colleague from Utah who, we generally get along pretty well. When there's a minute and 28 seconds left on the clock and somebody has asked you to yield and you deny the yield but give it to somebody in your own party, it doesn't really speak to bipartisanship approach on a hearing like this.

And I was going to ask you whether or not you totally disregard the Inspector General's findings and wish us to. Since there was going to be a bipartisan hearing, then I would think we would put some weight on the Inspector General's report and conclusions, which are contrary to your recommendations

Mr. CHAFFETZ. Will the gentleman yield? Will the gentleman yield?

Mr. TIERNEY. Yes, I will yield.

Mr. CHAFFETZ. The chairman said he disagreed with the Inspector General, the Inspector General was wrong.

Mr. TIERNEY. I think, I would reclaim my time, and I note that he disagreed with him on one quote of that report but agreed with him quite fully on the conclusions of the final report itself.

But from what I am reading in statute on this section 3, it says, notwithstanding sections 1 and 2 of this reorganization plan, there are hereby transferred to the chairman all the functions vested in the Commission pertaining 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 the civil authorities

and the public, directing and coordinating actions relative to such emergency incident.

Chairman ISSA. Would the gentleman yield?

Mr. TIERNEY. At the end I will if I have time.

In 1980, Congress enacted legislation on this and said the chairman will be the official spokesman of the Commission. There are hereby transferred to the chairman all those functions that I read. To the maximum extent possible under the emergency conditions, the chairman or other member of the Commission delegated authority under the subsection B shall inform the Commission of actions taken relative to the emergency, and following the conclusion of the emergency the chairman or a member of the Commission delegated to the emergency functions shall render a complete and timely report.

Mr. Chairman, did you do those things that the statute set out?

Mr. JACZKO. I did and I believe I did much more.

Mr. TIERNEY. Okay. Now I am concerned that what's probably going on in large part here is a disagreement in the interpretation of what powers the chairman has under the statute. That seems to be the underlying fact here, and that's not a new disagreement.

I go all the way back to a 1999 report, a 1998 report on this ambiguity regarding the chairman's role and the Commissioners' role continues. And it goes on in that basis. It lays a less than harmonious interaction. It seems that members of the Commission always think they have more responsibility, chair people, particularly new ones always think they have an enlarged role, and that policy resides with the full Commission and management resides with the chairman. It seems to me the same thing's going on here.

I look at a report done by our colleague over on the Energy and Commerce Committee, Mr. Markey, and I'm troubled, I'm troubled by the fact that his conclusion in that report draws some very concerning points. He says that after reviewing all of the records that he asked for, voting records, reports, emails, correspondence, memoranda, phone or meeting minutes or other materials related to the events at Fukushima or the NRC's response to it, he says that four NRC Commissioners attempted to delay or otherwise impede the creation of the NRC near-term task force on Fukushima.

He says that four NRC Commissioners conspired with each other and with senior NRC staff to delay the release of and alter the NRC near-term task force report on Fukushima. He says that the other NRC Commissioners attempted to slow down, or otherwise impede the adoption of the safety recommendations made by the NRC near-term task force on Fukushima.

He says the NRC chairman, Greg Jaczko, kept the other four NRC Commissioners fully informed regarding the Japanese Emergency Commissioners, despite claims to the contrary made by these commissioners. He said that a review of emails and other documents indicates high levels of suspicion and hostility directed at the chairman.

He said the consideration of Fukushima safety upgrades is not the only safety-related issue that the other NRC Commissioners have opposed. That concerns me. It concerns me when four members have findings like this by another member on his committee with his staff, and we come in here and sort of bear up on one, it

seems to we've got a problem with everybody here. You know, people have to work together in some respect. It is unprecedented that a Commission would send a letter to the White House chief of staff. I'm not sure it's a good precedent to set as opposed to trying to work things out.

Mr. Chairman, do any of those six items that I just read, do they seem to you to be accurate?

Mr. JACZKO. Well, it has been challenging, I think, to move forward on some of the task force recommendations. And again, I wouldn't want to assign motives or any other ill intention to my colleagues, but I think we have had some challenges.

Mr. TIERNEY. Did you feel that the things, that there was an attempt to slow down the release of that report on Fukushima?

Mr. JACZKO. There was definitely an attempt to prevent the release of the report.

Mr. TIERNEY. So do you think it was an attempt to make things more transparent and to provide to the public and Congress information that was important for them to have?

Mr. JACZKO. There was certainly a disagreement on the Commission about providing it, transparently, to the public. In the end, the majority of the Commission wound up providing the report, but there was a lot of internal disagreement about that on the Commission.

Mr. TIERNEY. I yield to the chairman.

Chairman ISSA. Now, your time—the time is expired, you didn't give me any, and I understand how important your questioning was.

With that, we go to the gentleman from Oklahoma.

Mr. LANKFORD. Thank you, Mr. Chairman. Well, thanks for being here. And as others have mentioned before, Mr. Cummings, this is a tough spot to be able to come to be able to talk about trying to work out functioning conversations, because we have a tough time within Congress ourselves.

The issue still remains though, the day-to-day operation of nuclear safety, and the decisions that you make are significant in this. And I want you to know we appreciate the work that you do from day to day, keeping us safe, but this has got to be worked out, as you know well. And it is an unprecedented action to say this could affect safety long term if we don't work this out, and so thanks for coming forward on it, thanks for working together and let's try to resolve this.

With that, Mr. Magwood, let me ask you a question, you made a statement that safety is the top concern. Some of your nuclear background, and just a brief statement on it. I have your bio but make a brief statement about your nuclear background.

Mr. MAGWOOD. Well, most of my nuclear background is in government. I worked at the Department of Energy for 11 years as a political appointee. I was in charge of the nuclear infrastructure associated with the civilian nuclear technology program, which includes the Idaho National Laboratory and, I guess 2,500-odd contractors. I was responsible for overseeing the management of reactor operations—

Mr. LANKFORD. Okay. In any of those operations, any of those environments, I assume you've got very competent people around you

that are all well-studied, all well-researched and you have disagreements on things. Has something like this occurred in other groups that you've worked with in other places to say we have four or five colleagues, we disagree and it breaks out in something like this? So have you seen something like this in the past?

Mr. MAGWOOD. No, I have not seen that.

Mr. LANKFORD. My concern is this is not just a disagreement on colleagues that are all competent on the issue. My concern is this becomes a management conversation to say how are things led by one individual or another, and how do we come to conclusions because, Mr. Jaczko, I appreciate your statement saying you're passionate about safety and that all of these arguments and these disagreements and lack of communication breaks down to the fact that you're passionate about safety, but that definitely alludes to the fact that you're more passionate about safety than everyone else is, and so it just becomes more heated to you or more significant.

And my concern is, is there an impression in your mind that you're more competent and more passionate about safety than the other Commissioners?

Mr. JACZKO. Well, Congressman, I'm committed to safety.

Mr. LANKFORD. Are you more competent and more passionate about safety in these areas than the other Commissioners?

Mr. JACZKO. That's certainly not a judgment that I would make, but I am passionate about safety.

Mr. LANKFORD. That's more so than the others around you, so there's five of you, and you look at and you know the meetings that you are in, and you look at them and you say, well, they're not—they're a little more, they lean in other directions besides safety, but I'm more passionate about safety. Is that your concern?

Mr. JACZKO. I would leave it to others to judge the various—

Mr. LANKFORD. I'm asking your opinion because it affects your management style.

Mr. JACZKO. I treat all of my colleagues as equal members and equal—

Mr. LANKFORD. Do you consider yourself more passionate about safety than your colleagues, yes or no?

Mr. JACZKO. I'm not sure how I would describe more or less passionate, but I am passionate about safety and I think that's the best I can tell you.

Mr. LANKFORD. That's a nice safe answer. I'm just asking a direct question because it affects—the reason I say that is, is because if in the back of your mind you're thinking if this is really going to be done right, I'm going to have to do it, because they're not as passionate as I am, because I'm am trying to figure out why some people get some information and some people don't, and why recommendations come from staff, and they get filtered through to try to determine what gets out to different people.

Because if you have in the back of your mind, I'm concerned for our nuclear safety, so I need to make sure our filter, what gets to them, because it may not be right, I just wanted to know, because that does affect your own record.

So yes or no, are you more passionate about safety than others, or do you have a concern that some other Commissioner is not as passionate about safety as you are?

Mr. JACZKO. Well, I—in regard to the information coming to the Commission, I think that’s the basis for your question, the Commission gets policy matters that come to the Commission for voting, information is provided as part of those, and I am rarely, if ever, involved in the provision of that information.

Mr. LANKFORD. Let me ask you a quick question separate from that and there’s also a concern, there’s a statement that’s been made that you reportedly at one moment said about the two different other Democrat appointees that we Democrats have to stick together on a vote. Was that a statement that you’ve made?

Mr. JACZKO. I don’t recall making that statement.

Mr. LANKFORD. Okay. My time has expired.

Chairman ISSA. Would the gentleman yield?

Mr. LANKFORD. Yes, I would.

Chairman ISSA. Do you have sourcing for that statement?

Mr. LANKFORD. My time has expired on that one. I would be glad to be able to take it—

Chairman ISSA. Okay. If you would provide it, I would appreciate it.

Chairman, a piece of administrative business for a moment. The gentleman from Ohio has asked to have an individual Member’s report from Ed Markey placed in the record. I have no objections. I do have a request that goes with it.

In reviewing it, you delivered to an individual Member, to Ed Markey, one of your former employers, you delivered him unredacted information and additional information beyond what this committee received through our request.

Would you pledge today to deliver us in the same unredacted form everything, I repeat, everything that was responsive to Mr. Markey?

Mr. JACZKO. Absolutely. And, Mr. Chairman, I think, as you know, we’ve provided a large number of documents to your staff.

Chairman ISSA. I appreciate that, but discovering that he received documents less redacted than we did, as an individual Member, and produced a report, I have no problem with this being placed in the record. But in order to make the record complete, we would need to have the same information, which we do not have today, and, quite frankly, we expect, normally, that what is redacted is redacted for good and proper reasons, and there should be no difference whatsoever unless, in fact, a committee demands unredaction, not an individual Member.

So if you agree to that, I withdraw my reserve and we now recognize—

Mr. KUCINICH. I want to thank the chair for including that in the record, and I agree with him that we should be able to receive this additional information.

Chairman ISSA. I think members on both sides would like to see it. Yes, Mr. Chairman.

Mr. JACZKO. I would just note that I can only speak for the documents that were in my possession. Some of those other documents may have been provided by other members of the Commission, so

I am certainly not aware of any documents that were redacted any differently. But, again, I can only speak for those that are in mine.

Chairman ISSA. Well, and the good news is that one thing I know about the executive branch is you guys authenticate very carefully what you give to people. So I'm sure we won't have a problem in getting the same information. And sometimes people interpret what somebody wants differently than somebody else. In this case, we want everything that Mr. Markey wanted for the same reason of doing our job.

With that, we recognize the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman, and I want to say it is quite a spectacle to have five members of the Commission arguing about management style before a committee of Congress. That, in and of itself, in some ways, erodes confidence and the function of the Commission.

One does not know who did what to whom and how important it is. The suggestion, obviously, by having a hearing of such prominence has the potential effect of undermining that confidence and obviously the chairman of the Commission is the target.

I regret that because I think we are at risk, perhaps, of trivializing your mission. The real conversation that ought to be taking place here may be less about management style, although that can be important, and more about mission and how well or poorly historically the NRC has carried out that mission; its cozy relationship with industry; its ability to cogently take lessons learned from tragedies such as Fukushima; its ability to reassure the public of safety and safety standards at nuclear power plants; and its ability to show demonstrable clear independence from the industry it regulates.

It is just as viable to posit that what's going on here is that we have a chairman who takes the mission seriously as it is to say we have a chairman who bullies his fellow Commissioners in a voice. I don't know what the truth is, but I do think this hearing ought to get at it.

Chairman JACZKO, do you see a philosophical difference between yourself and your fellow Commissioners with respect to the mission of the NRC and how to go about it?

Mr. JACZKO. Well, but we do have different approaches to what we believe is safe and how we define safety. I think that's clear in the different votes that we cast and the positions that we take as Commissioners.

Mr. CONNOLLY. Well, specifically, hone in on Fukushima. You answered a question about Fukushima just a little while ago to one of my colleagues and you confirmed that, in fact, there was an attempt by four fellow Commissioners to perhaps bury some of the findings of that study and/or to aggressively look at lessons learned from the single worst nuclear disaster in world history.

Mr. JACZKO. We did have a disagreement—

Mr. CONNOLLY. You did?

Mr. JACZKO. —on the release of—

Mr. CONNOLLY. You did; is that what you said?

Mr. JACZKO. That's correct.

Mr. CONNOLLY. Okay, go ahead.

Mr. JACZKO. About the release of the report and whether or not it should be reviewed by the Commission prior to ever being released publicly.

Mr. CONNOLLY. What was the nature of that dispute?

Mr. JACZKO. Well, it was simply, I believed the report, once it was completed, should be made publicly available and so the public could see what the views of—

Mr. CONNOLLY. Your Commissioners disagreed with that?

Mr. JACZKO. There were some who did disagree and wanted the report to be reviewed, and perhaps, acted on by the Commission and changed before it was released publicly.

Mr. CONNOLLY. On August 23, we had a major earthquake here in the east coast, surprised everybody, including in my home State of Virginia. We had a close call at the North Anna nuclear power plant as a result of that earthquake, which did generally cosmetic, some minor structural damage up and down the east coast. But it was a reminder that nuclear power can be vulnerable to seismic activity.

That plant was deemed as exceeding its design basis. Could you explain what that means to us, Chairman Jaczko, and what was the nature of the concern at the time after the August 23 earthquake?

Mr. JACZKO. Well, when plants are originally built and designed, they pick out the characteristics of an earthquake, and they build all of the structures in the plant to be able to withstand that type of an event. And the earthquake, in fact, was bigger than the earthquake that was hypothesized in the original design of the facility, so there were some shaking of the building that was larger than what originally in the—in the original analysis for the plant.

Mr. CONNOLLY. Potentially compromising safety?

Mr. JACZKO. Certainly it had the potential to compromise safety.

Mr. CONNOLLY. Were there other power plants in the east coast that were similarly affected or could have been?

Mr. JACZKO. We didn't see any that were directly impacted because that plant was very close to the center of the earthquake. But it was certainly possible that other plants could have experience effects from the earthquake.

Mr. CONNOLLY. Post August 23 earthquake, what action did the NRC take and was the Commission in agreement, or also in disagreement about those actions?

Mr. JACZKO. The Commission now, or the agency really, reviewed the safety of the facility. Ultimately it was a staff decision to determine whether or not the facility should restart, and I was very clear with the staff that they needed to do what they felt was appropriate for safety and, in fact, the Commission held an information briefing because there was interest among my colleagues in hearing and understanding what we were doing, and I think it was a very productive meeting and a very strong show, I think, of the Commission working and functioning as a body.

Mr. CONNOLLY. Consensually.

Mr. JACZKO. Yes.

Mr. CONNOLLY. My time has expired. I hope we get a chance to explore that some more. Thank you, Mr. Chairman.

Mr. GOWDY. [presiding.] I thank the gentleman. I will now recognize myself for 5 minutes of questioning.

I'm going to ask the non-chairman Commissioners a series of what I hope are quick questions and expectation hopefully of quick answer.

Ms. Svinicki, is the chairman's behavior affecting your ability to discharge the duties for which you took an oath to discharge?

Ms. SVINICKI. To this point, I believe that I have had access to what I need to faithfully execute my duties. However, I'm concerned that we're at the point where that is being compromised.

Mr. GOWDY. Have you lost confidence in his ability to lead?

Ms. SVINICKI. Yes, on the basis of his interpersonal conduct, I have.

Mr. GOWDY. Commissioner Magwood, same two questions to you, do you believe his behavior is impacting your ability to do your job, and have you lost confidence in his ability to lead?

Mr. MAGWOOD. It's a very complicated question. It's hard to answer yes or no. Let me answer it this way. I think that—I'm sorry—I think that over the time I have been a Commissioner, I have been able to get information that gives me enough confidence to make votes and to make decisions.

There have been times when getting the information has been more difficult than I think it should have been. My biggest concern is there are always, is the chance that there's some piece of information I just didn't even know existed that never got to me.

So as far as I know, I have had the ability to make decisions, fully informed. I have questions, I have doubts, and I have concerns.

Mr. GOWDY. Commissioner Ostendorff?

Mr. OSTENDORFF. My concerns with respect to the chairman's style have been primarily that his interface with our NRC staff has been abrasive, he uses the term "passionate." I'd say it has prevented staff from feeling comfortable they can bring forth their best views and recommendations to the Commission. From that standpoint, I think it's a grave concern.

Mr. GOWDY. Have you lost confidence in his ability to lead?

Mr. OSTENDORFF. At this stage, I have, yes.

Mr. GOWDY. Commissioner Apostolakis?

Mr. APOSTOLAKIS. So far, my votes could mean—have not been affected adversely by any actions by the chairman. In fact, in the letter to the chief of staff, we said that there may, there may be some harm in the future if this continues.

I believe if the chairman lets the staff send us their true views when various issues come before the Commission, and if he also controls his temper a little bit, he can continue to lead the Commission.

Mr. GOWDY. Chairman, there was an apology issued, I don't whether you drafted it or the White House drafted it. Who drafted your apology?

Mr. JACZKO. I prepared a letter that I sent to Mr. Daley. I'm not sure if that's the letter you are referring to.

Mr. GOWDY. Have you apologized more than once?

Mr. JACZKO. I have indicated to Mr. Daley in that letter that I was sorry for the distraction that this has caused.

Mr. GOWDY. Is that the only thing you're sorry for is the distraction? Do you admit any of the conduct that's been alleged this morning?

Mr. JACZKO. If—again, many of these accusations I'm hearing for the first time.

Mr. GOWDY. Well, that doesn't impact whether they're true or not. The fact that you haven't heard them yet doesn't mean they're not true. My question is simple, are they true?

Mr. JACZKO. I don't believe that they are true.

Mr. GOWDY. What does that mean, I don't believe that they are true? Have you been verbally abusive to female staff.

Mr. JACZKO. No, I have not.

Mr. GOWDY. Have you withheld information from your fellow Commissioners?

Mr. JACZKO. I have not.

Mr. GOWDY. Have you asked anyone are they on your team?

Mr. JACZKO. I have never said something like that.

Mr. GOWDY. Chairman, let me tell you what it looks likes from my vantage point, which my background is not in nuclear science. When you have four eyewitnesses that testify to something under oath, you know what they call the defendant after that? An inmate. Four eyewitnesses to the conduct.

It is unprecedented to me to have colleagues criticize one another privately. To do it publicly and to have to sit on either side of you to do it before a committee of Congress to me is unprecedented.

None of the allegations they have made are accurate. Is that your testimony?

Mr. JACZKO. I believe that on many of these instances that they are referring to have been misconstrued. And as I have indicated, that there are issues where I think we can improve our communication.

Mr. GOWDY. Well, what did you apologize for?

Mr. JACZKO. I apologize, as I indicated, for the distractions this caused.

Mr. GOWDY. For their misunderstanding? Did you apologize because they misunderstood what you did?

Mr. JACZKO. I have offered to my colleagues that we sit down with a third party, someone that we all could agree on to talk about these issues.

Mr. GOWDY. We really need a counselor for the Nuclear Regulatory Commission? We need a counselor for that?

Mr. JACZKO. I'm very interested in improving the communication because I think it's vital.

Mr. GOWDY. Does it matter to you that the four of them either have or are either rapidly losing confidence in your leadership? Does that matter to you?

Mr. JACZKO. That's very important to me, and it's something that I am very interested in working on.

Mr. GOWDY. But you deny the allegations that they testified to under oath?

Mr. JACZKO. Congressman, I believe I have answered this question.

Mr. GOWDY. Well, do it again for me. Do you deny them?

Mr. JACZKO. As I said, I believe I have answered this question very well to the best of my ability here.

Mr. GOWDY. I would recognize the gentleman from Illinois, Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman. I would like to yield 30 seconds to my colleague from Ohio, Mr. Kucinich.

Mr. KUCINICH. With all due respect to my good friend, the chair, these allegations are not allegations of criminal misconduct or anything like that, they are allegations that he doesn't get along with his Commissioners. That's not a basis for either imprisonment or for having the chairman resign.

So I think that we have to put this in perspective and continue to insist that the Commission focus on safety, and I want to take this opportunity to wish all of the members of the Commission a Happy New Year.

Mr. DAVIS. Reclaiming my time, thank you very much, Mr. Chairman.

Let me first of all thank the witnesses for appearing, I'm going to shift gears a little bit.

In July, the Union of Concerned Scientists issued a report entitled "U.S. Nuclear Power After Fukushima, Commonsense Recommendations for Safety and Security."

This report includes recommendations for changes that the NRC should make to improve the safety and security of U.S. nuclear plants. One recommendation made by UCS was that NRC regulations should be extended to cover severe accidents. This is what the UCS report states.

The NRC defines severe accidents as those more serious than the so-called design basis accidents that U.S. reactors are designed to withstand. While unlikely severe accidents can occur, as in Fukushima, and cause substantial damage to the reactor core and failure of the containment building, leading to large releases of radiation, for example, the agency does not evaluate or test the severe accident management guidelines that reactor owners voluntarily develop, so neither the NRC nor the public can be confident these guidelines would be effective.

Mr. Chairman, I understand that there has to be a reasonable limit on what licensees are required to do and that every plant can't be fully prepared for every imaginable worst-case scenario.

However, Fukushima should provide a wake-up call that severe accidents can and do happen. The Gulf oil spill is a prime example. That was the worst-case scenario, industry wasn't prepared, and it resulted in the worst environmental disaster in our Nation's history; would you agree with that statement?

Mr. JACZKO. Yes, it's a very fair statement.

Chairman ISSA. [Presiding.] Would the gentleman suspend for just a moment. We have stopped the clock.

We're going to have a minority hearing in a few moments, because that's a right. And I want to make sure that everyone understands, I have been very tolerant, but this hearing is not on nuclear safety, and we are not a committee with nuclear safety as a direct oversight.

This is on the leadership of the Nuclear Regulatory Commission, and although I will allow anything you want to do with your 5 min-

utes, I've always been very understanding, I would caution all members on both sides of the aisle that this is about a concern that has been legitimately raised all the way to the White House, that the committee believes is well within our unique jurisdiction as the Oversight Committee. We're not the Energy and Commerce Committee, we're not some of the Science Committee and so on.

So I just, the gentleman can continue, the chairman can answer, but if we're going to make this about nuclear safety, then we've essentially hijacked a legitimate issue and anyone who does it, shame on you. The ranking member.

Mr. CUMMINGS. Mr. Chairman, just a clarification, I didn't hear the question that the gentleman asked, but part of this hearing goes to safety and whether this Commission can function and carry out its safety responsibilities. As a matter of fact, there has been, the majority report that came out, talked about a catastrophe, and I use that word, because of what was said at the Commission and that they would not be able to function properly. So I don't whether that question goes to safety and whether or not they are able to periodically—

Chairman ISSA. Would the gentleman yield, and I thank the ranking member.

I was cautioning members because Mr. Davis was probably the best example of I know he was well intentioned, but nothing in his comment and nothing in his questions seem to go to the management and the questions of the management and capability to manage.

Mr. KUCINICH. Mr. Chairman.

Chairman ISSA. Hold on. The fact is I respect every member of this committee. I have always said—and I wasn't that way when we were in the minority in a couple of cases. Mr. McHenry vividly remembers being shut up because he was, quote, off subject. Use your 5 minutes any way you want, but I would caution members that, in fact, our jurisdiction, our legitimate jurisdiction is not over directly second guessing safety but, in fact, our oversight of the entire Federal workforce, all commissions, all agencies.

And so I only would ask that we do as much as we can to recognize that if there's an additional hearing, and if we legitimately can hold a hearing on the safety of our nuclear facilities more broadly, that's a legitimate hearing to ask for.

This hearing was very narrow, and it had to do exactly with why these five Commissioners are here today. The ranking member.

Mr. KUCINICH. Just briefly, just briefly, there's two points I want to make briefly. First of all, thank you for holding this hearing. I think it's important at this time and place that we have the hearing.

And the second thing that relates to Mr. Davis' concerns, if, for example, the industry is upset with this chairman and they would go through the members of the Commission to try to get at the chairman, the industry might be upset because they are concerned of pressure on safety. This is just a hypothetical, so I think that there might be a connection here is what I'm saying.

Chairman ISSA. And, Mr. Kucinich, I completely agree with you that if, in fact, the line of questioning goes toward, quite frankly, the intent and the reason behind two Democratic and two Repub-

lican appointees, somehow, making an objection that is not based on the failure of, you know, the allegation of mismanagement or particularly of outbursts and erratic behavior, you're absolutely right. Those kinds of questions certainly fall within the question of management at the Nuclear Regulatory Commission and would be in order.

And, Mr. Davis, I apologize. If you want to take additional time to restate your question.

Mr. KUCINICH. Mr. Chairman, I want to thank you for the manner in which you have conducted this hearing, I appreciate it, and I'm very grateful.

Chairman ISSA. Thank you. Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman and with all due respect, and the comments of the ranking member, those of the ranking member of the subcommittee.

Understanding in any way shape form or fashion and quite frankly, we haven't gotten to my question yet, his comment is second; the mission of the regulatory agency is very important to me, the mission, and the outcome of the decisions that are made.

No matter how much you may disagree or bicker, or have difficulty with management style and with personality differences, in the end, the bottom line is do we make the best and most effective decisions for the people of this country and all the environments that are impacted and affected by those decisions?

And so, Mr. Chairman, my question is, do you feel that the interaction between yourself and other Commissioners have had any negative impact relative to decisions that the Commission has made?

Mr. JACZKO. Well, no, I don't think it has. I think certainly I want to work to improve the communication but, for example, since this letter was worked on, the Commission has held nine meetings where we've gotten together and been briefed on a variety of different issues.

We have held one of our significant hearings related to new reactor licensing. We have held three of our formal voting-type sessions where we formalized legal opinions of the Commission. And as I said, yesterday we held a meeting on a very important safety issue related to fire protection.

The Commission has also held at least two agenda sessions, which I had held routinely every month, and that was, in particular, one of the suggestions and recommendations from that 1999 Inspector General report that the Commission have regular sessions to talk about agenda, and that's something that I have instituted.

Mr. DAVIS. Well, your answer is no. Let me just, Mr. Chairman, with your indulgence, could I ask if the other Commissioners would just respond quickly to that?

Chairman ISSA. I would ask unanimous consent for an additional 30 seconds for the gentleman, without objection.

Mr. APOSTOLAKIS. The decisions have not been affected by the management issues that we have raised. I believe all the decisions that have been made, having in mind the safety and the adequate protection of the American public, and I am personally very of-

fended by the suggestion that I am an instrument of the industry in its efforts to overthrow the chairman.

Mr. OSTENDORFF. I agree with Mr. Apostolakis. I am also offended by the implication of Mr. Kucinich's statement. I assure this committee—

Mr. KUCINICH. I want to respond.

Chairman ISSA. Please continue, sir.

Mr. OSTENDORFF. With respect to Mr. Davis' statement, I could not more wholeheartedly agree with your emphasis on nuclear safety.

I agree with my colleague, Commissioner Apostolakis, that we have done our very best. We are making good decisions. That said, we are still operating under a very difficult environment that does not give me confidence that our staff feels free to bring us the best information uninfluenced.

Mr. KUCINICH. A point of personal privilege.

Chairman ISSA. The gentleman may continue. The gentleman is trying to get answers from each of the Commissioners, and I would like to have that in order first.

Mr. MAGWOOD. I agree with my colleagues, I think that we've been able to continue the people's business very well under the circumstances. I think the senior staff has managed to keep the agency focused during whatever conflicts have been occurring. The staff of the NRC has been focused on their mission of safety. I believe that the agency is functioning at the bottom line protecting health and safety as well as it ever has. That doesn't mean it's been easy.

Ms. SVINICKI. I agree with Commissioner Magwood's response.

Mr. DAVIS. Thank you very much, Mr. Chairman, I appreciate that.

Chairman ISSA. Would you yield to the gentleman from Ohio for a second.

Mr. DAVIS. Yes.

Mr. KUCINICH. Thank you, Mr. Chairman. Commissioner Ostendorff, I didn't call your name, I gave a hypothetical about the potential influence of the industry on members of the Commission. But since you objected to that, I find that very instructive. Thank you, Mr. Chairman.

Chairman ISSA. Thank you. The gentleman's time has expired.

Mr. DAVIS. I yield back, Mr. Chairman.

Chairman ISSA. I thank the gentleman. We now go to the gentleman from Michigan—oh, I'm sorry, I now go to the gentleman from Florida, Mr. Ross, the Republican on the Democratic side. Mr. Ross.

Mr. ROSS. Thank you Mr. Chairman, Commissioner Magwood, I am very impressed with your experience, not only in the nuclear industry, but also as an administrator. And I read your testimony, opening testimony, and you talk about some incidents involving some abusive behavior with female employees that you had encountered and, in fact, I think you indicated that nevertheless I found their misogynistic behavior entirely unacceptable and personally offensive and you immediately let these supervisors go. That behavior that those people that you let go, does that compare in any way to the behavior expressed by Chairman Jaczko?

Mr. MAGWOOD. It was similar in the fact that it was verbal abuse. It was, it involved screaming and, you know, just a lot of pointed language that the women involved found very, very emotionally straining.

Mr. ROSS. And when you let go in your previous situation, when you let those supervisors go that were being the abusers, that changed, didn't it? It improved the situation?

Mr. MAGWOOD. Well, let me emphasize that it was within the Federal government, so I didn't have the ability to simply fire these people. I would have liked to have fired them.

Mr. ROSS. But you eliminated the distraction?

Mr. MAGWOOD. Absolutely. I immediately, the very day I found out, they were removed from their supervisory responsibilities and geographically relocated.

Mr. ROSS. And do you believe that removing Chairman Jaczko may be appropriate to protect any further abuse to the female members of the NRC?

Mr. MAGWOOD. I suspected that a question like that might come up. I have decided to simply present the facts as I understand them and let others make that decision. It's not within my power to appoint or remove a chairman, but I think that these are—this is information that people—

Mr. ROSS. But it rose to the level of abuse that you had seen in the past?

Mr. MAGWOOD. It was very similar. The stories I heard were very similar to what I heard in the past.

Mr. ROSS. And removing that abuse corrected the problem?

Mr. MAGWOOD. Yes, it did.

Mr. ROSS. Okay, and that has been your experience.

Ms. Svinicki, you talked about lack of confidence. Do you feel there's any way to repair the confidence in this chairman?

Ms. SVINICKI. If the conduct were to be completely changed, there is always the potential to rehabilitate relationships.

Mr. ROSS. Commissioner Ostendorff, how do you feel? Do you feel that your lack of confidence at this point is reparable or do you feel that it's just lost?

Mr. OSTENDORFF. Sorry—I would have to agree with Commissioner Svinicki that it's been severely damaged, and once there's an erosion of trust, it's extraordinarily difficult to regain that trust. I'm not going to say it's going to be impossible or would be impossible, but it would be extraordinary difficult to regain.

Mr. ROSS. Thank you. And, chairman, I can't help but sit here and think of the kids watching the movie "The Caine Mutiny" contain with Humphrey Bogart and him being put on trial, and by his crew members in a very serious situation. So, I mean, it begs the question, Captain—I mean, Chairman Jaczko, how has the crew—the voyage been so far?

We're at a point now where you have made an apology. And specifically what I am asking is what did you apologize for?

Mr. JACZKO. Well, as I've indicated in a letter to Mr. Daley, I apologized for the distraction, and I look forward to discussions with my colleagues about ways that we can further enhance and improve our communication and trust.

Mr. ROSS. And one of those suggestions is that you have a third party, I would assume a facilitator, to try to reopen lines of communications with your fellow Commissioners. My concern is, is that if the issue becomes more of maintaining your position, as opposed to restoring the integrity of the NRC, what is your course of action? Are you considering a resignation?

Mr. JACZKO. I have no plans to resign.

Mr. ROSS. Okay, even if it means more to focus on keeping your job than to restoring the NRC?

Mr. JACZKO. I have no plans to resign because I continue to believe that under my leadership the agency has performed very well. We have committed ourselves to safety, and I believe my record shows that.

Mr. ROSS. But it's unprecedented where we are today when you have the four Commissioners who have made these allegations. And as a student of management myself, I can only suggest to you that management by intimidation may have some short-term goals, but some long-term effects, that are very adverse. Management by motivation is probably the only way you are going to restore the integrity of this organization.

So I implore you, I beg of you, if it is your position you seek to keep, then it is the integrity of this organization that must be foremost, and it must be done so through not only a facilitator—if that's what you believe—but more importantly, through motivating these people to be the best that they have been able to be, for what is at stake here is not only the 4,000 employees, but the nuclear safety of this entire country.

I yield back.

Chairman ISSA. Will the gentleman yield?

Mr. ROSS. I'll yield.

Chairman ISSA. Thank you.

Mr. Chairman, wouldn't you agree that what's going on here today and what's been going on for months now clearly hurts your ability to retain, recruit, retain many of those 4,000 people and to motivate them to do their best job?

Mr. JACZKO. Well, I have, I have not seen any drop-off in any of those areas.

Chairman ISSA. Okay. So none of this has any effect on 4,000 people.

Mr. JACZKO. As I've indicated, I think it's unfortunate that we have this distraction, but the men and women at the NRC are professionals and they'll will continue to do their jobs effectively.

Chairman ISSA. Okay. We now go to the gentleman, Mr. Welch.

Mr. WELCH.

Mr. WELCH. Thank you, Mr. Chairman. Thank you for calling this hearing, a couple of points. Number one, I regret, obviously, that we're here. This is not a personnel committee, and it is regrettable that there is this conflict at the senior level of the Commissioners.

Number two, I don't think that Congress is the place to go to resolve this.

Number three, I assume that each one of the members of the Commission is professional and makes decisions based on each of your own independent best judgments. The obstacles and the chal-

lenges that you face, professional and personal, notwithstanding, and I think we all owe you that debt of gratitude.

The concerns I have are less about trying to resolve something that I don't believe is within the capacity of a congressional committee to resolve, it has to do with the safety and the focus on safety, and I say that as a representative from the State of Vermont where we have had an ongoing, and somewhat contentious situation involving our local nuclear reactor.

When things like a cooling tower fall down and the reaction on the part of the company that runs it is that it's not really a big deal, that doesn't provide great assurance to the people of Vermont. When there is discovered leaking underground, reactive material and the response of the nuclear power company is that they don't have underground pipes, and it turns out, in fact, they do have underground pipes, that posits significant concerns, a concern by Vermonters.

There is litigation now, and we understand that this body voted between the State of Vermont and Entergy about its future, and we understand that the Commission voted by a 3-2 margin to come in as a friend on the side of Entergy against this litigation.

Mr. WELCH. That causes us some concern. So safety is my concern. And I know that safety is your concern, but I just have a few questions that caused me some concern about how active and aggressive the Commission is on coming to a conclusion about some safety standards. The most recent NRC fire protection standards were promulgated in 2004. Earlier standards that applied had not been met for 25 years. And as I understand it currently, 47 nuclear power plants are still not in compliance and they are requesting yet another 12-year delay. And my understanding is the Commission is basically accommodating a 12-year delay on top of a 25-year delay. Commissioner Apostolakis, can you address that.

Mr. APOSTOLAKIS. Yes. The reason why the new regulation was promulgated in the 2000's is that because of the large number of exemptions of requests for exemptions that we received regarding the area, we decided that stuff—we decided this was not working very well. But I would like to point out when we say 47 plants or units do not comply, they have been—they have implemented compensatory measures. They don't comply with some provisions of the original rule, but they have done something else to meet the intent of their rule. So it's not that they are unsafe or anything, and this new rule now—

Mr. WELCH. Thank you, I only have a few minutes. I appreciate your response. I guess what I will have it do because I can't ask a whole lot of questions is to express to each of you the concern about what appears to be a very slow turnaround on the implementation of safety standards. And you know full well that if you're living in shadow the of a nuclear plant, the closer you are, the more anxious you are. But we have examples, and this is what's so profoundly important about the safety focus is that if something can go wrong, even when we think it won't, it probably at some point will go wrong and that's what we saw in Japan.

And if something goes wrong the consequences of an event are so catastrophic, and I'm preaching to the choir here, I know. But I'm doing it because this is the anxiety we live with in Vermont.

And when we have a nuclear power plant that the cooling tower collapses and we're told not to worry about it, that's hard to be comfortable. And when there is leaking pipes and we are told there are no pipes, and upon investigation there is. We really need to see a sense of urgency. In some cases, some penalties associated with wrong information being provided and failure to comply with safety standards, because some of these things that happen in the beginning that fortunately don't cause harm give you some apprehension that an event will occur that does cause harm. So thank you very much.

Chairman ISSA. Thank you. We now go to the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman, and thank you to the panel for being here. This is truly not a hearing that I ever expected to be a part of as a Member of Congress, and certainly not with the Nuclear Regulatory Commission. But I think it's a hearing that apparently is very well positioned and important to have. When I read through the letter that was sent to Chief of Staff Daley, and I read bullet points in that letter, and I'd like any Commissioners that would be willing to comment. The question that I will have from this, where it says that the chairman intimidated and bullied senior career staff, that he interacted with us, his fellow Commissioners, with such intemperance and disrespect that the Commission no longer functions as effectively as it should.

That's strong language in a letter, an unprecedented letter that has been sent to this administration. And I would—I would surmise that if this administration, from this hearing, understands the gravity of this situation and how that, with no pun, intended this could blow up still further to a regulatory agency of an amazing importance to us. That strong language is telling. Can you, any of the Commissioners, explain to me why this language was included with specific illustrations? I don't want to pick on a University of Michigan grad, but Commissioner Svincki, why was the language included and what are the some of the key illustrations that you'd give for its importance?

Ms. SVINICKI. I would state that I realize the significance of putting my hand to that language. I did not do so lightly. I would characterize that I did it very reluctantly, candid and candidly I would state realizing that ultimately it could bring us the kind of event that we're holding this morning. And I regret that, but that language at that time I supported that, I was comfortable in support of it, but realized the significance of my action.

Mr. WALBERG. Any significant illustrations of what you put in that language, examples?

Ms. SVINICKI. I think a number of the events have already been testified to this morning regarding interactions between the chairman and the professional staff of the agency. There also have been very tense interactions in meetings between the chairman and members, other members of the Commission. And again, I think people can be passionate about issues without fundamentally the kind of conduct that I've observed.

Mr. WALBERG. Any other Commissioners' response to that?

Mr. OSTENDORFF. Yes, sir, I will comment specifically that senior staff has complained to me personally about the chairman taking

an approach that led them to believe that they were not in a free environment to bring forth their best views with respect to how SECY paper 11-0093 the near-term task force report from Japan where there is a paper that was acknowledged to have been withdrawn back in July. There's also staff complained to me about how the chairman's office and chairman responded to their content of the 21-day report with respect to short-term actions to be taken as a result of Fukushima.

Mr. WALBERG. So this goes to safety?

Mr. OSTENDORFF. Those two reports dealt with how the Commission would take actions in response to the Fukushima event.

Mr. WALBERG. Any other Commissioner's response to that? Mr. Chairman, I want to yield to you some time, but I do have one final question so would be glad to yield this if you will then allow me to finish with one—

Chairman ISSA. I will be very brief. For each of the Commissioners, do you believe that employees, professional staff of the NRC have experienced intimidation, hostile or offensive conduct on behalf of the—by the chairman, anything that would be considered to be intimidating, hostile or offensive by the chairman, any professional staff experience that?

Ms. SVINICKI. Yes.

Mr. MAGWOOD. Yes.

Mr. OSTENDORFF. Yes.

Mr. APOSTOLAKIS. Yes.

Chairman ISSA. Ladies and gentlemen, that's the definition of harassment. I hope that we can all agree that that's why we put it in the statute. I yield back.

Mr. WALBERG. Thank you, Mr. Chairman. Recently Dale Klein, former commissioner and colleague suggested that the chairman does not need to be removed from the panel, but could instead be demoted by the President. A new chairman be chosen from among the existing members. Would anyone on the panel like to comment on this potential solution?

Chairman ISSA. I don't think you will get someone who wants to say they want to be chairman here today. I ask unanimous consent the gentleman have an additional 30 seconds.

Mr. WALBERG. I guess that's my point, Mr. Chairman. I probably didn't expect someone to answer and say, yeah, I would like to be the chairman. Or I will appoint that or I will suggest someone. But I think this certainly indicates a very significant problem with this Commission being able to function together for the best interest of this country, the citizens it serves, the regulatory responsibility they have. And that indeed, if this is the problem, to this extent and the administration's willing to let it go on, we in America have concerns beyond simple management styles, but the function of this regulatory agency and the responsibility to the American people. Thank you, Mr. Chairman.

Mr. JACZKO. Mr. Chairman.

Chairman ISSA. I thank the gentleman. If the gentleman would like to respond.

Mr. JACZKO. Yeah, could I make a comment please? I appreciate the opportunity. My colleague mentioned a meeting or a phone conversation I'd had on the development of the so-called 21-day paper.

I believe the committee has an audio recording of that conversation. And I'm certainly comfortable with that audio being made publicly available. I believe it characterizes my passion and demonstrates my commitment to open discussions among members of the staff, and my strong interest in them providing me with their candid views. So that if nothing else, I can ensure that the Commission is informed with the information it needs.

Chairman ISSA. I thank the gentleman. Can I get a nodding of heads by all the Commissioners that the release of audio that has been recorded can be made available to the committee? Hearing no objections, I assume they will be delivered to us. With that, we recognize the gentleman from Idaho, Mr. Labrador, for 5 minutes.

Mr. LABRADOR. Thank you, Mr. Chairman. I especially want to welcome Commissioner Magwood who worked diligently at the Idaho National Laboratory. And I believe Commissioner Svinicki worked for one of our senators, so thank you for being here.

This has been truly one of the most frustrating hearings I've ever participated in, because I've never seen such self deluded behavior by any individual in probably my entire life. The lack of awareness of what's happening here in the Commission is truly astounding to me. To watch an individual sit here and say that the only thing he is responsible for, and he's sorry about is that the distraction that has been caused by your behavior. It is truly just embarrassing just to watch you this entire time that I've been here.

So let's really just get down to what's happening here. You believe, and you did not answer this question when my good colleague over here asked you the question. But you believe that you are more passionate than the other four individuals sitting here about nuclear safety; is that not true?

Mr. JACZKO. Well, I—

Mr. LABRADOR. Just answer the question yes or no, you can say yes, you can say no. Are you more passionate, are you less passionate or are you equally passionate? It's a simple question.

Mr. JACZKO. My voting record, I think, shows that I have taken positions on safety—

Mr. LABRADOR. So are you more passionate, is that what you believe?

Mr. JACZKO. I would say my position—

Mr. LABRADOR. And you also believe you have better judgment than these four individuals, is that not true?

Mr. JACZKO. I believe that I—

Mr. LABRADOR. Yes or no, simple question.

Mr. JACZKO. I believe I have very good judgment as a safety—

Mr. LABRADOR. And your judgment is better than the four individuals here combined, isn't that true, according to your own opinion?

Mr. JACZKO. It's up to others to determine—

Mr. LABRADOR. No, it's up to you because you're the one who's making decisions that is making their life a living hell. So you tell me do you have more passion, do you have better judgment, yes or no?

Mr. JACZKO. I feel very strongly that I have an appropriate judgment—

Mr. LABRADOR. You have better judgment than the other four individuals sitting here correct according to you?

Mr. JACZKO. Congressman, as I said many times, I'm—

Mr. LABRADOR. Okay, you're not going to answer the question when it is clearly from your statement, from your actions that you believe that your judgment and your passion surpasses the four of them combined.

So your distraction that's being caused—it is interesting to me, I have managed an organization, I had a law firm for a while. Now I have to manage my congressional office. Your management style is bringing some problems that are being brought here to the fore, and you're saying that you're willing to work with them, but you're not willing to admit that you have done anything wrong, that's what I cannot understand. The only way you're going to be able to work with these individuals and actually change your management style is by admitting that you actually screwed up, that you actually did something wrong.

Are you not willing to admit that there is something in your management style that has brought us to a congressional hearing that is unprecedented in American history?

Mr. JACZKO. Well, Congressman, I take responsibility—

Mr. LABRADOR. Yes or no.

Mr. JACZKO. —for this agency. And as I've indicated, I'm willing to discuss these issues with my colleagues and figure out how we can better communicate.

Mr. LABRADOR. But you haven't done anything wrong. What are you going to discuss that they are wrong and you're right, correct?

Mr. JACZKO. I would like to discuss these communication issues and some of the misunderstanding.

Mr. LABRADOR. Have you done anything wrong in your management of this agency?

Mr. JACZKO. Congressman, as I said, I take full responsibility.

Mr. LABRADOR. For what?

Mr. JACZKO. For this organization.

Mr. LABRADOR. No. For what in your behavior are you taking responsibility for? Just name one thing, just one thing that you admit that you have done wrong because I don't believe these four individuals would come here if you haven't done a single thing wrong. Just name one thing that you've done wrong.

Mr. JACZKO. Well, Congressman as I said, I'm very passionate about safety and—

Mr. LABRADOR. So it is wrong for you to be passionate about safety is that what you're telling the American people right now?

Mr. JACZKO. Congressman—

Mr. LABRADOR. Is that wrong to be passionate about safety and they are not passionate about safety, right?

Mr. JACZKO. Congressman, as I said, I'm very passionate about safety, if that's ever been misconstrued by my colleagues, that's something I would like to discuss.

Mr. LABRADOR. But what is in your passion, in your passionate statements, what's wrong would bring us to a moment that we have to have these four individuals, these four Commissioners who have dedicated their entire life to the public safety of our Nation, what in your behavior is wrong? Just name one thing, that's all I'm

asking. I can name 20 things that I have done wrong in my life if somebody asked me the question. You can't name one thing.

Mr. JACZKO. Well, Congressman, as indicated, it's a conversation I think I would like to have with my colleagues to better understand—

Mr. LABRADOR. This is ridiculous. Your answers today have been totally ridiculous. Because there's no way that these individuals who have the same passion, the same commitment to the safety of the United States would be sitting here complaining about you, complaining about the staff unless you had done something wrong. And it's absolutely ridiculous for us to think that under any circumstance, you're going to change your behavior because you're not even willing to admit that you did one thing wrong. That's just incredulous to anybody who is watching this meeting.

Mr. Chairman, I've run out of time.

Chairman ISSA. I thank the gentleman. We now go to the gentleman from New Hampshire, Mr. Guinta, for 5 minutes.

Mr. GUINTA. Thank you very much, Mr. Chairman. I just have a couple of quick questions. For anyone on the panel other than the chairman, can anybody talk to me about the first IG report and what conclusions it made relative to this issue?

Ms. SVINICKI. I—sir, I will attempt just broadly. The NRC inspector general has testified, I believe, before the House Energy and Commerce Committee earlier this year on the content and conclusions of his report. That report focused—it covered a number of issues, but it spent much of its content on the decisionmaking around the Yucca Mountain related activities at NRC. There were some other more broad findings about the relationship on the Commission and I would like to reacquaint myself with those findings rather than testify then generally.

Mr. GUINTA. Okay. To the chairman, I see a letter hear dated December 12th from the President's Chief of Staff, and it's issued to Chairman Issa. And in it, it says, the fourth paragraph down, "He has indicated his intention to reach out to his fellow Commission colleagues for that purpose," he's—referring to you. On the back of the letter he talks about the development of any recommendations to improve the circumstance. So it sounds like what he's saying here is that the President's not going to take action, that he'd prefer these issues be resolved by you and the Commission. Is that your understanding of—

Mr. JACZKO. Well, I don't want to speak for—certainly for the administration, but as I read the letter what I saw was that the Chief of Staff would be looking at the situation and would be looking to inspector general's report to get some guidance on ways to improve the organization.

Mr. GUINTA. Would you agree with the assessment in this letter that the disagreements amongst the Commission are over policy matters?

Mr. JACZKO. I certainly think we have policy disagreements, but I think there are also, I believe, organizational miscommunications and misunderstandings about roles and responsibilities.

Mr. GUINTA. To me, it appears that the IG's report has really not improved things. As a matter of fact, from what I read and heard, you can make an argument of things further deteriorating. So I ap-

preciate your interest in wanting to work with your colleagues, but it seems like that point has come and gone. And as stated by other members of this committee, I think there is growing frustration that we're at this level of inquiry.

So I would prefer that this be handled in one of two ways, but have you yourself, you say you take full responsibility for actions of the committee. Would you consider stepping down as chairman.

Mr. JACZKO. I have no intention to resign.

Mr. GUINTA. I would yield back the remainder of my time.

Chairman ISSA. The gentleman yields. Thank you. I think it is clear, the chairman is making no apologies for misconduct, only for the lack of harmonious life among the five of you. I asked the chairman who his Board of Directors is. I asked him about collaborative and normally consensus-type activity. For each of the Commissioners, when the chairman was not the chairman, do any of you believe that he would have accepted one of you treating him the way he is now treating you?

Ms. SVINICKI. Sir—

Chairman ISSA. No?

Ms. SVINICKI. I believe I'm the only member of the Commission who served with Chairman Jaczko when he was then a Commissioner, we were both Commissioners when I began my service on the Commission. And I would characterize that I actually, when I was new to the Commission, found very helpful that he tutored me in many of the ways of insisting upon the role of individual Commissioners that they have an important contribution to make. I considered that I learned many of those points from him.

Chairman ISSA. So when he was a Commissioner, life was collaborative, he got it, he was a former staffer to House and Senate people, he kind of got the idea that you all had to work together and reach, at least the 3-2 vote, and hopefully 4-1 or a 5-0 whenever possible. So this is a very capable Commissioner, just not a good chairman in your opinion, a terrible chairman in your opinion.

Ms. SVINICKI. I would characterize that during that period it really was limited to policy differences at times and not the differences we see now.

Chairman ISSA. I ask unanimous consent for just 30 more seconds for a single question because one half of this has been asked repeatedly. For each of the Commissioners, now I'm not looking at you as Republicans or Democrats, Democratic members, because as far as I can tell, none of you are partisans in your background, certainly career Navy officers and so on. So you've been accused sort of, of being lapdogs for industry, not caring enough about safety. There has been some insinuation that that could be the case. Would each of you just briefly tell me about your view, your passion about safety and how that brings you to each of your votes when you are given an opportunity, please?

Ms. SVINICKI. My sole motivation in serving on the NRC is to work on issues of advanced nuclear safety and security for the country. I have many family members in Wisconsin and Michigan that live near nuclear power plants, and so I'm concerned for all Americans and think and am motivated even my own family in their protection and safety.

Chairman ISSA. Commissioner Magwood.

Mr. MAGWOOD. Mr. Chairman, as someone who's spent really my entire professional career working in the nuclear field, I have a very deep appreciation for the hazards presented by handling of nuclear materials, I've overseen it for many years at DOE. As a result, I view any nuclear activity as a matter of great responsibility. I think that anyone who is involved in that activity should be held to a very, very, very high standard, and I expect the best of everyone involved. Thank you.

Mr. OSTENDORFF. Mr. Chairman, I have a record going back to 1976 for being involved in nuclear power issues, nuclear weapons issues. I assure you that having operated and trained others to operate, supervise and maintain nuclear power plants and submarines that I have a very rigid sense of safety and am very concerned on safety issues. And I welcome anybody to examine and discuss my voting record with me on safety issues at NRC.

Chairman ISSA. Commissioner?

Mr. APOSTOLAKIS. Mr. Chairman, I have spent my entire professional career working on nuclear safety issues and I was elected to the National Academy of Engineering on the basis of my contributions.

Chairman ISSA. I will yield the same amount of time to the ranking member as I'm going over so I will be very brief. Commissioner Ostendorff, as a former Navy officer, from your experience, not just within your commands, but within your military service, which is much longer than mine, don't you have countless examples you've seen of fine officers who were competent, technically capable who were relieved because, in fact, they exhibited behavior that lost the confidence of the men and women that worked for them?

Mr. OSTENDORFF. Yes.

Chairman ISSA. Thank you. I yield to the ranking member.

Mr. CUMMINGS. I'm sitting here and I'm listening to all of this and I swear to God, this is incredible to me. We are better than this, and, you know, I feel like I'm sitting here trying to referee a fight. And I said from the beginning, I'm not a referee, I haven't done that since my kids were tiny and now they are adults.

Chairman Jaczko, let me tell you. I do appreciate the fact that you're willing to sit down with your colleagues. I don't want you to quit. I do not want you quit. I want you to continue to fight for the American people and do what's right for them. And I don't think your passion and your commitment and your expertise is any greater than the other Commissioners. I think all of you are very wonderful, strong Americans, very committed to our safety. And I believe you've given everything, you've giving everything you've got to make things work. But we've got to do better than this.

There is no reason, I think, why this should have risen to this level. And Commissioner, I know people have been trying to get you to admit you that you've done things wrong. I would imagine that people up here would have a difficulty admitting that they were wrong when they've got opinions saying they operated within the law and what have you. I don't know what they would say to be frank with you. But I do know one thing, that—and I—after 61 years on this earth I have come to realize something that's very significant, one of the best ways not to achieve a goal is to be distracted. I mean, if you look at people who have not achieved the

things that they tried to achieve in life, a lot of times, it is because they got distracted.

I have not come to ask you—all five of you, I've come to beg you to work this thing out. I mean, to sit down like reasonable people and work it out. The American people are tired of dysfunction. They are really tired of us. And we—what you all are doing is so very, very important. I listen to everybody and Commissioner Apostolakis, I'm getting there.

Chairman ISSA. When you get to know him better, his name is George.

Mr. CUMMINGS. You know, I heard what you said. I think you summarized it better than anybody else. When asked whether you lost confidence, did this Commissioner, Mr. Jaczko, could do the job, you said, you know, I think he can do it, but he's got to change his attitude a little bit. Is that pretty much—I don't want to take words out of your mouth. That's pretty much what you said, is that right? Come on, talk to me.

Mr. APOSTOLAKIS. That's a summary of what I said.

Mr. CUMMINGS. Say it, tell me. I don't want to misstate you.

Mr. APOSTOLAKIS. He should control his temper and let the staff send us their frank views.

Mr. CUMMINGS. Stop doing what?

Mr. APOSTOLAKIS. Frank views, opinions, the staff. The staff should communicate to the Commissioners their candid opinions.

Mr. CUMMINGS. Can you live with that, Mr. Chairman?

Mr. JACZKO. Absolutely.

Mr. CUMMINGS. Yeah. I mean I keep thinking, you know, you guys have to go back. You know, all the press, you see all them press people? They are loaded up over there, they are typing away, look at them. You know why, because they like controversy. They want to make—they are Tweeting and twitting and doing all kinds of things right now so that—and you all have been elevated, all of you, now everybody knows your names. But I'm telling you, when all of this is over, you've got to go back. The President is not going to get rid of you. You're doing a great job. It may not be attitude—I think you need to change some of these attitudinal things that you're dealing with, but you have to do that.

So I beg you for the sake of the American people to please sit down, work this thing out. I mean, sharing information with your fellow Commissioners, do what you've got to do, but make it work. That's all I have to say.

Chairman ISSA. I thank the ranking member. As I close the first panel, I would like to make it very clear that if this does not get resolved, this is not the last time this committee will come to a full committee hearing to review the status of management at the NRC. Additionally, we are the personnel committee of the Congress to a great extent. We do look at the management structure. We do so like a Board of Directors, it is not ours to tell you what to do. It is ours to find out whether it is being done as is prescribed by law and as the executive branches said they want to do.

We will retain continuing jurisdiction, we will expect all of the promises made here today of material to be added to our discovery. We will, in fact, also remind everyone, we're the whistleblower committee, people come to us on our lines, on the Internet by the

hundreds per week. Those people expect that if they give us information, there will be no retaliation within any agency of government. We will strictly enforce and protect anyone who comes before this committee at any time, and I know in the opening statement that was mentioned. People who come before us come protected from the moment they come to tell us something. The only time they are not protected is if they are not telling the truth, to use a double negative.

We will continue to look. We will not tolerate harassment, we will not tolerate retribution. Now the ranking member said it more eloquently than I could, we want you to resolve this. It is not the kind of thing that comes before Congress, and it is not particularly good other than fodder for the press. So as we continue to retain jurisdiction and oversight, bear in mind we will be looking at every action of all of you. We want you to do everything you can to live up to your oaths.

And Chairman, I would hope that as you work with Chief of Staff Daley, that you recognize that this is an extraordinary opportunity if the President retains confidence in you to change dramatically how these four men and women believe you are working. And I think certainly at least one Commissioner has said very well that he believes that change can happen, and the others, to a certain extent, did too.

We're not your CEO. We are ultimately America, the American stockholders, Board of Directors and we will assert our rights and obligations if we do not see this resolved, and that's something that I'm positive will come from both sides of the aisle. So I thank you, we are going to break briefly for a second panel. We thank you for your testimony and we stand in recess.

[Recess.]

Chairman ISSA. The committee will come to order. I'd now like to recognize our second panel of witnesses. Mr. William Borchardt, Executive Director of operations at the Nuclear Regulatory Commission, and Mr. Steven Burns is general counsel for the NRC.

Chairman ISSA. Gentlemen, I know you have been sitting through the first panel so pursuant to our rules, would you please rise to take the oath?

Do you solemnly swear or affirm that the testimony you will give will be the truth, the whole truth, and nothing but the truth?

Let the record indicate both answered in the affirmative, and Mr. Borchardt, is that correct pronunciation?

Mr. BORCHARDT. Yes, sir.

Chairman ISSA. One of my best friends is Bob Borchardt formerly of New York of Recoton company, so it is the only reason I didn't mess your name up. You're recognized to give your opening statement.

STATEMENT OF WILLIAM BORCHARDT

Mr. BORCHARDT. Thank you very much, Chairman Issa, good afternoon. As you mentioned, my name is Bill Borchardt, I have served as the executive director for operations at the NRC since May of 2008. I began my NRC career in 1983 after serving 5 years in the U.S. submarine force. As the executive director for oper-

ations, I am the senior staff member responsible for the operational and administrative functions necessary for the day-to-day operations of the agency. This includes supervising and coordinating agency operational activities, policy proposal development, and implementation of Commission policy directives. Approximately 3,500 of the 4,000 staff members of the NRC report through the EDO.

The staff of the NRC is fully committed to the agency's mission to protect public health and safety as well as protection of the environment. This is a 24-7 responsibility. Accomplishment of this mission requires the dedicated and interdependent efforts of every employee. For more than 35 years, NRC experts have had a singular focus on our safety and security mission. We strive to be tough, but fair and reliable regulators, and to be an organization that continues to learn from experience.

Learning from operating experience is frequently resulted in the imposition of new regulatory requirements and corresponding safety improvements at the facilities we regulate, as well as improvements to our own operations. The events at Fukushima are providing to us today a new opportunity to learn from operating experience and to improve our regulatory structure. Our safety and security mission has been and will always remain our top priorities.

In addition to a clear mission, I believe any organization involved in nuclear safety, especially the safety regulator must have a robust safety culture, the NRC staff safety culture embodies the principles of an open and collaborative work environment, the agency's principles of good regulation which are independence, openness, sufficiency, clarity, and reliability, and a commitment to live by a set of organizational values, and at the NRC, they integrity, service, openness, commitment, cooperation, excellence and respect.

These principles are critically important to the success of our safety mission. They continue to guide our interactions within the staff, and with our regulated community, and with all other stakeholders. They are part of the staff's daily life at the NRC and promote mutual support, open communications, and a fully-engaged staff. I believe an open and collaborative work environment encourages interdependence among the staff and promotes open discussion to help us make good decisions and provide the Commission with our best recommendations, and to best serve the American public.

The NRC has a long tradition of valuing diversity of ideas, different opinions and questioning the status quo. In fact, we have a number of formal and informal programs that encourage the staff to raise differing views so that those views can be addressed in an open and transparent manner. We have demonstrated the differences of opinion within the staff can be addressed in a respectful and constructive manner. These differing views are frequently provided to the Commission for their consideration. It is through this open discussion that we most effectively execute our nuclear safety responsibilities.

The staff is responsible for keeping the Commission completely and currently informed on all relevant matters. We accomplish this through a series of formal and informal mechanisms, including memoranda to the Commission, Commission papers, status reports

and oral briefings. The Commission provides direction to the staff through budget decisions and staff memoranda.

You have already been made aware of the results of the 2011 Office of Personnel Management Federal employees viewpoint survey. This survey measured employees' perceptions of whether and to what extent their organizations have the type of characteristics typically associated with high-performing successful organizations. The fact that the NRC ranked first in all four categories examined by the survey is a result of the collective efforts of the entire staff to adhere to the principles that I just mentioned.

I am extremely proud of the skilled and contentious staff with whom I work at the NRC. They have maintained their focus on our mission, and the fundamentals essential to doing an excellent job. It is because of our dedicated technical and administrative staff that we are the preeminent nuclear regulator in the world. And through our combined efforts, we strive to serve the American public in the best way we can. This concludes my testimony, thank you.

Chairman ISSA. Thank you.

Chairman ISSA. Mr. Burns.

STATEMENT OF STEPHEN BURNS

Mr. BURNS. Thank you, Chairman Issa, Ranking Member Cummings. I'm pleased to be here before you today as the committee examines the management structure of the Nuclear Regulatory Commission. As general counsel, I supervise the staff of approximately 110 people. My office reports to the full Commission and provides a full range of legal services, including counsel and representation to both the Commission and to the offices that report to the Commission or NRC chairman, and to the offices that report to Mr. Borchardt the executive director for operations, often referred to as the NRC staff.

As general counsel, I'm responsible for providing legal counsel to the chairman and the other Commissioners as well as the senior agency staff. I often interact with the chairman and with the other Commissioners, and I strive to be fully responsive to the needs of all Commissioners in carrying out these responsibilities.

I've been a career employee with the NRC since 1978. I began my legal career as an attorney in what was then called the Office of Executive Legal Director where my initial duties primarily involved enforcement and oversight.

I then served as a legal assistant and then executive assistant to vice admiral retired Kenneth M. Carr, who is a Commissioner and then later chairman of the agency from 1989 to 1991. Upon conclusion of Chairman Carr's term, I became the director of the Commission's Office of Appellate Adjudication, the office that drafts the Commission's adjudicatory orders. Subsequently, I served for more than a decade as the agency's deputy general counsel where my responsibilities included overseeing legal representation of the staff and NRC administrative proceedings.

In April 2009, former Chairman Klein initiated my appointment to serve as general counsel, which was subsequently approved by the Commission. These diverse positions have given me substantial understanding of the legal framework governing Commission oper-

ations, particularly the Atomic Energy Act, the Energy Reorganization Act of 1974, and the Reorganization Plan Number 1 of 1980.

The Energy Reorganization Act, of course, establishes the Commission and with respect to its members, provides that each shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to information relating to the performance of the duties or responsibilities, and shall have one vote.

The chairman is granted particular duties as the official spokesperson of the agency, and as the principal executive officer with respect to the agency's executive and administrative functions and as reflected in the reorganization plan.

In carrying out these duties, the Energy Reorganization Act instructs the chairman to see that the faithful execution of the policies and decisions of the Commission and that he shall be governed by the general policies of the Commission and by such regulatory decisions, findings and determinations as the Commission may be, by law, be authorized to make.

As I have advised the Commission, the NRC's enabling legislation reflects that the structure of the agency is framed around two core principles, the rule of the majority, and the delegation of executive leadership to the chairman, which includes carrying out the Commission's policies. In providing legal advice and counsel to the Commission, I'm ever mindful of these principles and believe they were intended to work in harmony to ensure the effective operation of the NRC. I'd be pleased to answer any questions that the committee may have.

Chairman ISSA. Thank you, and I will recognize myself for the first round for 5 minutes. Mr. Borchardt, the—earlier testimony, I'm going to follow up on that quickly, have you ever been asked to withhold, limit, edit any information given to the other four Commissioners that the chairman has?

Mr. BORCHARDT. There have been Commission papers and some budget proposal documents that have been altered under the chairman's direction, yes, sir.

Chairman ISSA. Were those alterations in detail, made available so that the Commissioners could understand that or were they withheld?

Mr. BORCHARDT. The original staff proposal you're asking about?

Chairman ISSA. Yes, sir.

Mr. BORCHARDT. Eventually I believe it was made available to the Commission.

Chairman ISSA. Eventually doesn't quite get it. Were they initially denied?

Mr. BORCHARDT. Some of these documents were draft documents that the chairman's office had seen and provided direction on how the final document should be prepared.

Chairman ISSA. So the chairman spoon feeds the Commissioners what he wants them to see, is that maybe a little excess, but basically a direction?

Mr. BORCHARDT. I would describe it as the chairman influences the information and the timing of the information that is provided to the Commission on occasion.

Chairman ISSA. So he lied to us, he told us that he never did that, he told us he didn't withhold information and he said they had full and complete, although he used some interesting words a couple of times, but I held him back and you were both here, to make sure that he said that. But you're telling me here today is that the Commissioners, the four Commissioners do not have equal and unfettered access to the same information, even though they are asked to make decisions based on the information they receive; is that correct?

Mr. BORCHARDT. I would say the chairman influences the timing of the information that's provided.

Chairman ISSA. Oh, so he knows about it sooner and they know about it when he's ready for them to know about it.

Mr. BORCHARDT. On occasion, yes.

Chairman ISSA. Okay. Is that open and collaborative? Is that consistent with the 3,500 people that you fall under you and the way things work?

Mr. BORCHARDT. It is not a practice we use within the staff, no, sir.

Chairman ISSA. And there's been allegations of what under the definition that the Federal Government uses of intimidation, harassment—intimidation and a hostile environment existed at the NRC. In one or more cases, has that been exhibited by the chairman?

Mr. BORCHARDT. Yes, sir.

Chairman ISSA. But he doesn't have—never mind, I won't go into it, he doesn't have anything to apologize. Mr. Burns, you did a very good job in your opening statement of explaining that for whatever reason, Congress gave incredible authority to ignore the other four Commissioners to the chairman, right?

Mr. BURNS. I am sorry, Mr. Chairman. What?

Chairman ISSA. That the powers, the executive powers are virtually everything for the chairman. You know, that is basically what you said in your opening statement.

Mr. BURNS. I don't think that is what I said. I said that there are two principles at play. The one principle, majority rules; and the other one, that executive leadership has been focused through the reorganization plan in the chairman. Now, in doing that—

Chairman ISSA. But executive leadership in a normal company is anything that the majority of the board thinks is wrong by the executive is, in fact, second-guessable by the board. In this case, you are saying that is not the case.

Mr. BURNS. I don't believe I said that at all. And if I—

Chairman ISSA. Well, but you are the legal definer. If three of the Commissioners think the chairman is dead-wrong in administration, executive, or other activities—in this case, four of them think he is wrong on many occasions—shouldn't that, in fact, be determinative of his behavior? Or are you saying that he has the authority to ignore them in his dealing with ordering staff, you know, some 4,000 staff around?

Mr. BURNS. I am not going to comment on the chairman's behavior—

Chairman ISSA. No, no, I am not asking for the behavior. I am asking about authority.

Mr. BURNS. With respect to his authority, a majority of the Commission, particularly in policy matters, adjudications, and rule-making, set the policy of the agency, and the chairman is honor-bound to carry that out.

With respect to administrative matters, for the most part administrative matters are delegated to the chairman. There are some specific examples or exceptions within the reorg plan. Appointments, for example Mr. Borchardt's appointment and my appointment, he initiates but the full Commission approves—

Chairman ISSA. Okay. So there are a few times in which he has to go to his board. The rest of the time, he runs the show.

Mr. BURNS. And that is the contemplation under the reorganization plan.

Chairman ISSA. Okay.

Clearly, today, we were mostly talking about his management failures, at least relative to the 4,000 staff members and the four commissioners. But one very quick question.

I heard Mr. Tierney read verbatim the law that allowed this emergency powers. Was Japan under the regulation of this Commission?

Mr. BURNS. No. And I don't think—

Chairman ISSA. So you issued an opinion that everything he did was legal and within his jurisdiction. And I heard the verbatim—now, I am a layperson, so I want to be told why I didn't understand. But I heard, I think, the complete phrase of authority. And we are talking about halfway around the world a nuclear power plant and, actually, several reactors were in distress, and he asserted unilateral rights to completely dismiss any participation by his Commission.

That power, under what was read to us today—and I am not an expert on it; you are—that power was limited to the 102 sites in the U.S. Nowhere did it appear—and I guess some other sites—but nowhere did it appear to have anything to do with a foreign, sovereign nation and their reactors, did it? The intent of that statute, that right.

Mr. BURNS. Mr. Chairman, the interpretation I gave to that statute and to those provisions in the reorg plan were not that the chairman was suddenly the nuclear regulator of the country of Japan. What it had to do with is that the question I was asked during the course of the accident was, when the emergency center was stood up and the chairman was in the ops center and the United States Nuclear Regulatory Commission was asked for information regarding recommendations to protect U.S. citizens in Japan and U.S. servicemen through the Ambassador and through the administration, he asked me—what the question was, was it within his purview to communicate that information? I gave him the opinion that, yes, it was. This was not an usurpation of all the powers—

Chairman ISSA. Okay. And my time has long expired. I wanted to just make clear that you gave him an opinion, so it is not him asserting some unilateral—but you are telling him that that phrase, that part of the law, gave him the authority to lock out his four Commissioners?

That wasn't the main reason—today we were talking about management. So it is important for me to understand that, because

that action, which was not the focus of this hearing, if there is a mistake, it is yours, not his.

Mr. BURNS. Yes. And there was no mistake on my part.

Chairman ISSA. Well, I think there was a big damn mistake, but that is—

Mr. BURNS. Well, I am sorry, Mr. Chairman, there was not.

Chairman ISSA. But that is a judgment call, not a legal call. And—

Mr. BURNS. That is right. That is a legal judgment call. In my legal judgment, given the intention of the President of the United States in 1980 in issuing the plan and providing for the concentration under emergency circumstances of power into the chairman, that the chairman acted reasonably.

I have had no Commissioner tell me that my view is wrong. I followed the opinion of my predecessor advising Chairman Meserve after 9/11, when there was not a particular threat to a U.S. power plant or facility.

Chairman ISSA. Thank you.

The ranking member is recognized.

Mr. CUMMINGS. Thank you very much. May I have 8 minutes, Mr. Chairman? Thank you very much.

Following the Fukushima disaster, the NRC took a number of actions related to the emergency, including ensuring that two U.S. west coast nuclear plants would remain safe from possible tsunami effects and standing up an emergency operations center at the NRC to monitor events as they unfolded in Japan. The operations center remained in monitoring mode to assist Japan and the multitude of U.S. citizens in that country and to deal with the ongoing emergency at the Fukushima plant.

Mr. Burns, as the NRC general counsel, you wrote a memo on March 17, 2011, and your memo concludes that the chairman had the legal authority under his emergency powers to issue the press release that provided the 50-mile protective guidance for United States residents and other interests in Japan.

In that memo, you said this, and I quote: “The chairman’s actions fit within his authorities under Section 3 of the reorganization plan, under which all authorities vested in the Commission pertaining to an emergency are transferred to the chairman.”

Mr. Burns, is that correct?

Mr. BURNS. That is correct. That is in my memorandum.

Mr. CUMMINGS. And can you tell us simply how the chairman’s actions were proper under current law?

Mr. BURNS. Yes. And, Ranking Member Cummings, the other things I would emphasize, it was not only, I think, a reasonable representation of the emergency powers, but as the official spokesperson of the agency, he had information that was developed by the staff and communicated that. So even if you disagree with respect to emergency powers, I think as a spokesman he could do that.

The point I made—and I actually think you read the quote from President Carter during the testimony of the Commissioners—is that the purpose of the plan in Section 3 was to focus the emergency response responsibility into a single person, the chairman. That was a finding coming out of the Three Mile Island accident.

And that is—and looking at that and, again, looking at the memo of my predecessor to Chairman Meserve, I felt, though it was a novel question, which I acknowledge in the memo, I thought that was a reasonable judgment.

Mr. CUMMINGS. And you were using your legal judgment, your legal expertise; is that correct?

Mr. BURNS. Yes, I was, sir.

Mr. CUMMINGS. Some have alleged that the chairman should not have used his emergency authorities to respond to the Fukushima crisis because the incident did not—and I think this is what Chairman Issa was going to—did not involve a U.S. nuclear facility or materials licensed or regulated by the Commission.

But in your memo you obviously disagree. You said that you do not view the language of the reorganization act of 1980 as—and I quote, I am quoting you—“limiting the scope of the chairman’s emergency response authority only to incidents involving particular NRC-licensed facilities,” end of quote. Is that right?

Mr. BURNS. That is correct.

Mr. CUMMINGS. And in your memo you pointed to an opinion by the former NRC general counsel following the attacks on 9/11. Here is what you said, and I quote: “I know that former General Counsel Cyr gave a similar opinion in the context of an agency response to the 9/11/2001 terrorist attacks in determining that the absence of an actual event or damage to a nuclear facility or materials did not limit the chairman’s authority to exercise his emergency powers.”

Mr. Burns, can you explain what that 2001 opinion said and why it is useful for understanding how the chairman exercised his authorities during the Fukushima crisis?

Mr. BURNS. Certainly.

Briefly stated, after the 9/11 attacks, the NRC again stood up its emergency center I think primarily in a monitoring mode or an enhanced monitoring mode. There was, again, no specific threat to a particular U.S. facility. It kept in that operation for a few months.

And the chairman, Meserve at the time, I think some of his Commissioners wondered, well, how long is this going to go on? And I think he asked the general counsel, General Counsel Cyr, to give an opinion. And her opinion—again, she said, we understand what—you know, in terms of the text in the reorg plans. But, she said, looking at it again at President Carter’s transmittal statement and looking at the general purpose is to focus the emergency response responsibility into a single official, that that was a reasonable action on her part to do—I mean, it was a reasonable action on the part of Chairman Meserve in the 9/11 context to do. And I adapted that.

And, again, you know, I concede, it was a novel question.

Mr. CUMMINGS. Now, Mr. Burns, it has been alleged that the chairman, in violation of his statutory responsibilities, does not keep the Commission properly informed. In your transcribed interview with the committee staff, however, you stated that the individual Commissioners have a wide variety of ways to get information they need to do their jobs. For example, any Commissioner can ask agency staff for information, and each Commissioner holds regular meetings with senior NRC staff. Is that correct?

Mr. BURNS. That is correct.

Mr. CUMMINGS. In your interview, you said this, and I quote: "The Commission can ask for information within its functions, and it is not restricted to asking for the information that the chairman thinks that the Commissioners ought to have. They could ask for anything within those functions. There is some balancing, again, about potential burdens and all that, but essentially that is a fairly powerful tool," end of quote.

Is it fair to say that each Commissioner has tools at his or her disposal to keep themselves informed?

Mr. BURNS. I think it is. And I think that is what both the Energy Reorganization Act and the reorganization plan provide.

Could I make—

Mr. CUMMINGS. Please do.

Mr. BURNS. Just one footnote I would add to that, Mr. Cummings, and that is this. In matters involving the budget, the chairman is responsible for budget presentation and budget development. And so, actually, the view that we have is that, in terms of the timing, there is some influence in terms of the timing. It doesn't mean that the Commission can't get the information, but it is not realtime because, again, the contemplation of the reorg plan is that the chairman presents a budget. Once it is presented, then information is fair game to the Commissioner.

Mr. CUMMINGS. Now, did you also say that—did you inform committee staff during your transcribed interview that you were unaware of any instances in which the chairman withheld information or failed to inform the Commission, in breach of his statutory responsibilities?

Mr. BURNS. Yes, I am not aware of any.

Mr. CUMMINGS. All right. Is it fair to say that each Commissioner—Mr. Burns, can you describe to the committee what you believe the statute requires of the chairman in terms of keeping the Commission informed?

Mr. BURNS. I think the reorganization plan in Section 2, 2(c) or 2(d), talks about the chairman's responsibility and the EDO through the chairman. It defines or outlines that responsibility. And with respect to that, that can be implemented through the Commission's internal procedures, in terms of information flow and the like. And as you describe from my interview, is that Commissioners can ask staff for information.

The last thing I would note is that the statute also provides, in effect, a safety valve; that if any employee or officer of the Commission believes that there is critical safety information or security information the Commission should be aware of, it can communicate with the Commission.

Mr. CUMMINGS. Finally, do you believe that individual Commissioners have any obligation to seek out information they believe they need?

Mr. BURNS. Well, I think that each Commissioner has to decide for themselves what information they need in carrying out their responsibilities. And I think just as a matter of their functioning, they have an obligation and, I think, an ability to do that.

Mr. CUMMINGS. Thank you.

Mr. PLATTS. [presiding.] I thank the gentleman.

I yield myself 5 minutes for the purpose of questions.

I thank both of you for your service at the NRC and your testimony here today.

Mr. Borchardt, the issue of information-sharing certainly is critical for the Commission doing its job well; if the Commission is going to take a vote, that they all have the ability to make informed decisions and all have the same information.

In your opinion as the senior staff member, do you feel that the staff feels comfortable sharing information? Because it has been made a point that all of the Commissioners have the right to ask for information. But do the staff subordinate to you feel comfortable in sharing information with the other Commissioners if it is contrary to a view they know that the chairman holds?

Mr. BORCHARDT. Well, I think there has been a longstanding practice that the staff is responsive to individual Commissioners' requests for information through oral conversations. That continues.

There is a higher degree of apprehension, though, today under the current environment, as the first panel discussed, that has, at least for me, a concern that there could possibly be some reluctance to provide information as timely and as candidly.

Mr. PLATTS. And with that, you reference in response to a request for information. And I guess if there is not a request for information from a Commissioner but staff has information they think is relevant, do they feel like they, one, have to wait to be asked about it and even then are hesitant? Or do they, you know, feel free to share what they know, even if it has not been asked, because it is relevant to something that is going to come before the Commission?

Mr. BORCHARDT. Well, I think, you know, it is informative to separate these discussions into two different types.

There is an informal conversation that occurs between an individual Commissioner and perhaps an individual office director that reports to me. That is a casual conversation that has a free flow of information. Normally, both parties would raise topics of interest.

The other methods of communication are far more formal. Those are documents that are typically signed out either by myself or by the office director to provide the status of an activity or perhaps to raise a potential policy issue to the Commission. Those discussions are much more formalized into written correspondence.

Mr. PLATTS. And in both there is a chilling aspect today because of the current environment of the staff sharing information, whether it is informal or formal?

Mr. BORCHARDT. There is a change in practice, I think, that goes to the discussion from the earlier panel. And that is, the historical practice, as I understood it through my 28 years at the NRC, is that if the staff felt that there was information that would be of interest to the Commission, that the staff would fault to the side of providing that information in some kind of a written document so the Commission could decide whether or not it was of interest to them and whether or not they wanted to adopt it as a policy issue for their consideration.

Now what has happened more on occasion is that the chairman's office has made a decision as to the timing of when that informa-

tion would go forward. So that was a fairly significant, from the staff's perspective, change in practice.

Mr. PLATTS. And, clearly, then, an intent to control the information that is provided to the other Commissioners?

Mr. BORCHARDT. Or to control, as the chairman has described it in the past, control the agenda of the Commission so that he could monitor the Commission's activities. And by Commission, I mean the five Commissioners that were at the first panel, not the staff, technical staff's activities.

Mr. PLATTS. And when you say monitor the Commission, do you think there is precedent for the chairman having the appropriateness of monitoring the efforts of the other Commissioners versus just setting the agenda?

Mr. BORCHARDT. Well, I think perhaps my choice of words, saying "monitoring," was not quite right. What I meant to say is probably better to use your words, which was to set the agenda, to have the Commission agree as to what topics would be raised, when the Commission would issue directions to the staff on which topics.

At any given time, we may have quite a few documents and decisions before the Commission that we are waiting for guidance on.

Mr. PLATTS. In your own capacity, have you been reprimanded or in any way had action taken against you by the chairman for sharing information with other Commission members?

Mr. BORCHARDT. Well, I would put myself in the same category as a number of the other senior managers within the staff that have, you know, received, you know, a form of verbal direction and verbal counseling that, at least in my view, was not consistent with the NRC values that we endeavor to perform our own behavior with.

Mr. PLATTS. And that was where your intent was to share what you thought was relevant information with the other Commissioners and the chairman took exception to that?

Mr. BORCHARDT. Yes, I mean, that would be an example. Another would be just on the development of a staff position, a recommendation that we would provide to the Commission.

Mr. PLATTS. In your role as senior staff, would you tolerate that type of conduct from a subordinate of yours?

Mr. BORCHARDT. No. And in my testimony that is the point I was trying to make, that the organizational values that we endeavor to live by that I think are the reason the NRC has been such a strong regulator and such a good place to work for our employees, that that kind of behavior is inconsistent with what we expect from the staff.

Mr. PLATTS. Thank you again for your testimony.

My time has expired. I yield to the chairman.

Chairman ISSA. [Presiding.] I thank the gentleman.

I thank you both for being here today. As often happens with a second panel, people burn themselves on the first panel. I would ask if both of you would be willing to take additional questions from Members in writing.

Mr. BORCHARDT. Yes, sir.

Mr. BURNS. Yes, sir.

Chairman ISSA. Thank you.

Then, without exception, that will be allowed for—Mr. Cummings, can we leave the record open for 2 weeks to allow Members to put in questions and have them respond?

Okay. Without objection, the record will be held for that purpose for 2 weeks.

Chairman ISSA. I thank you again for your testimony.

And we stand adjourned on this hearing.

And I would just announce that we have votes imminent, so immediately following this set of votes, we will begin the minority hearing.

Thank you. We stand adjourned.

[Whereupon, at 1:15 p.m., the committee was adjourned.]

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Opening Statement
Rep. Elijah E. Cummings, Ranking Member

Hearing on "The Leadership of the Nuclear Regulatory Commission"

December 14, 2011

In March of this year, a massive earthquake and subsequent tsunami killed more than 20,000 people and devastated northern Japan. It caused catastrophic damage at four of the nuclear reactors at the Fukushima power station. This was the worst nuclear disaster since Chernobyl 25 years earlier.

Our number one priority on this Committee must be ensuring that we learn the lessons of the Fukushima disaster and take appropriate action to improve the safety of nuclear power plants in this country.

Yesterday, the Union of Concerned Scientists (UCS) issued a statement imploring our Committee to focus today's hearing squarely on these safety issues. Dr. Lisbeth Gronlund, a physicist and co-director of the Global Security Program at UCS, urged the Committee to "focus on the safety issues facing the U.S. reactor fleet rather than on NRC's internal squabbling." As she stated, "The NRC shouldn't let five years pass before it enacts post-Fukushima reforms."

I strongly agree with these statements. The single most critical issue facing the NRC today is how it will respond to the Fukushima crisis. Five months ago, a task force of career NRC staff issued 12 recommendations intended to make U.S. nuclear power plants safer. In October, the staff prioritized eight of these recommendations. According to the staff, these recommendations "have the greatest potential for safety improvement in the near term" and "should be started without unnecessary delay."

For example, one of the key problems in the Fukushima disaster was that the tsunami knocked out the station's backup power, causing temperatures to rise in four reactors and resulting in the substantial release of radiation. NRC staff has recommended that all existing and new reactors in the United States strengthen their capabilities to mitigate these types of blackouts.

I look forward to hearing the views of all the Commissioners today on how we can implement this and other reforms as soon as possible.

**ADDITIONAL OPENING STATEMENT MATERIAL FROM RANKING MEMBER ELIJAH
CUMMINGS
Hearing on "The Leadership of the Nuclear Regulatory Commission
December 14, 2011**

The following was added to prepared remarks by Ranking Member Elijah Cummings in his opening statement of December 14th, 2011.

“Let me say this, on behalf of the American people. I ask of you Chairman Jaczko, and the other commissioners. I ask that you not allow your disagreements to become the enemy of the destiny of this great organization. I also ask that you not allow this squabbling to have the effect of being a weapon of mass distraction. That is so important. ... The single most important issue facing the NRC today is how it will respond to the Fukushima crisis...”

With respect to the allegations of mismanagement, let me say this. I agree that it is a serious matter when four Commissioners write a letter to the White House criticizing the Chairman for creating "a chilled work environment." These allegations should be taken seriously, which the White House has done.

Based on my review of this issue, however, I also believe that the current Chairman has exhibited one of the strongest safety records of any previous NRC Chairman. I would urge anybody interested in this issue to read the harrowing transcripts of the recordings from the emergency operations center stood up by the Chairman to help the people of Japan and U.S. citizens in close proximity to the Fukushima danger zone. You will be impressed by the skill and courage of those who worked around the clock to prevent this disaster from becoming far worse.

As a result, I am struggling to determine how much of this squabbling relates to personality conflicts and how much relates to a fundamental disagreement about the statutory structure of the Commission itself.

The Inspector General, after interviewing all five Commissioners and senior NRC staff, concluded that the Chairman acted within his authority. The General Counsel of the NRC agreed after examining the Chairman's actions relating to Fukushima. He wrote in an opinion that "the Chairman's actions fit within his authorities."

Similarly, our Committee's own investigation, which has included transcribed interviews of 15 senior NRC staff and the review of thousands of documents, has uncovered no violations of law or instances in which the safety of U.S. nuclear facilities has been placed in jeopardy.

The truth is that when Congress reorganized the NRC in 1980, it created a structure with a very strong Chairman. As President Carter said at the time, the experience of Three Mile Island demonstrated that "the Commission as a whole cannot deal expeditiously with emergencies."

Moreover, this is not the first time there has been conflict between the NRC Chairman and other Commissioners. A 1999 report by the Inspector General described a very similar situation and found that the statutory structure of the NRC leads to tensions between the Chairman and other Commissioners.

The natural question is where we go from here. Based on the letters all five Commissioners sent to the Committee in preparation for today's hearing, I believe they are all willing to fulfill the fundamental mission of the NRC. I sincerely hope we can use today's hearing as an opportunity to get beyond past differences and refocus our energies on the goal of nuclear safety.



Davis-Besse Atomic Reactor: 20 MORE Years of Radioactive Russian Roulette on the Great Lakes shore?!

INTRODUCTION

FirstEnergy has applied to the U.S. Nuclear Regulatory Commission (NRC) for a 20 year operating license extension at its nearly 34-year-old Davis-Besse nuclear power plant near Oak Harbor, Ohio, just over 20 miles east of Toledo.¹ If approved, Davis-Besse would be permitted to operate for 60 years, until 2037 (its original license, granted in 1977, is currently set to expire at the end of 40 years of operations, in 2017). Beginning a decade ago, NRC has rubberstamped 59 of 59 license "renewals" sought by industry,² including at the oldest operating reactors in the U.S., despite some of them having very serious, documented safety risks due to age-related degradation. The NRC Office of Inspector General, however, has reported serious problems with NRC's license extension program: NRC staff have "cut and paste" the nuclear utility's own work, sometimes word for word, falsely presenting it as independent safety analysis, then once license extensions are rubberstamped, destroyed the working documents that formed the basis for "renewal" approvals.³

But Davis-Besse is one of the most problem-plagued atomic reactors in the entire country. For example, NRC acknowledges that Davis-Besse has suffered six (out of a total of 34 incidents so designated nationwide) "significant accident sequence precursors" between 1969 and 2005, three times more than any other American nuclear plant. This includes the September 24, 1977 "stuck-open pressurizer PORV" (Pilot-Operated Relief Valve) at Davis-Besse, an almost identical accident precursor that unfortunately did lead to a 50% core meltdown at Three Mile Island (TMI), Pennsylvania just a year and a half later. NRC has calculated that this 1977 accident precursor at Davis-Besse had a 7% "core damage probability" (CDP), making it the fourth most serious accident in the entire industry during the time period in question, surpassed only by the 1979 TMI meltdown, 1975 Browns Ferry, AL fire (assigned a 20% CDP), and the 1978 Rancho Seco, CA steam generator dryout (assigned a 10% CDP).⁴ (However, it deserves mentioning that the Fermi 1 plutonium breeder reactor located in Monroe, Michigan – 30 miles across Lake Erie, and visible with the naked eye, from Davis-Besse – also suffered a partial core meltdown just a few years earlier than NRC's timeframe above, in 1966.⁵) But the 9/24/77 TMI precursor accident was but the first of numerous times "We Almost Lost Toledo," but one of many skeletons in Davis-Besse's closet.

Three Mile Island meltdown precursor incident, September 24, 1977

Very fortunately for Toledo and points downstream and downwind, including Cleveland, the fledgling, six-month-old Davis-Besse reactor was only operating at 9% power⁶ when "a spurious half-trip of the steam and feedwater rupture control system initiated closure of the startup feedwater valve. This resulted in reduced water level in SG [steam generator] "2." The pressurizer PORV lifted nine times and then stuck open because of rapid cycling."⁷ Obscured by such NRC techno-engineering "Nukespeak"⁸ is that this unforeseen "break-in phase" accident created instant chaos in the Davis-Besse control room, bewildering the highly trained operators, leaving them in "complete confusion" for over 20 minutes as they tried to stabilize the suddenly and inexplicably out-of-control reactor. Over three hundred bells and flashing lights were simultaneously signaling alarm as a water column displaced the steam bubble "shock absorber" and filled the pressurizer on the very top of the reactor, risking any sudden jolt fracturing safety-significant pipes, and as the Number 2 Steam Generator risked boiling dry, which could cause dangerous overheating and even a "loss-of-coolant-accident" in the hellishly hot reactor core. Operators "grasped at straws," rashly deciding to chuck emergency manual procedures that only seemed to be making matters worse in this unprecedented accident situation. Luckily for the unsuspecting cities just to the east and west, an operator spotted a gauge reading that resolved the perplexing puzzle, and corrective action was taken at the 26th minute of the crisis that brought the situation under control.⁹

Despite such a wild roller coaster ride, almost no one within the industry, including at reactor design firm Babcock and Wilcox, grasped the gravity of this accident. Most NRC officials were of the mindset that Davis-Besse personnel had acted appropriately, that the situation had been satisfactorily resolved, and that there were no more lessons to learn from the incident. However, an NRC regional inspector, James Creswell, from the Chicago office refused to "shut up." After first exhausting normal channels by working, in vain, within the system, Creswell – at great personal risk to his career and livelihood – bypassed his nay-saying chain of command and

directly communicated the significance of the accident, and his unresolved concerns, to the attention of NRC Commissioners Bradford and Ahearn, as well as their technical staff, on March 22, 1979. Tragically, it was too late -- the TMI meltdown occurred just six days later, following an almost identical accident sequence as had begun to unfold at Davis-Besse 18 months earlier. Creswell was later honored by NRC for his efforts, as the agency tried to clean up its ruined image after the TMI disaster.¹⁰

Later in 1977, Davis-Besse experienced another "significant accident sequence precursor," when Emergency Feedwater (EFW) pumps became inoperable during a test. NRC reported "During EFW pump testing, operators found that control over both pumps was lost because of mechanical binding in the governor of one pump and blown control power supply fuses for the speed changer motor on the other pump." NRC calculated that this incident had a core damage probability of 1/200, or 0.5%.¹¹ But Davis-Besse's very bad *first* year of operations was just the beginning.

"The Worst Accident Since TMI" -- Loss of cooling to reactor core for 12 minutes, June 9, 1985

Due to a convoluted combination of equipment malfunction and unavailability resulting from deferred maintenance, inexplicable "spurious actuation" in safety critical systems, operator error, and even overzealous security precautions that interfered with emergency actions, on June 9, 1985 at Davis-Besse, "several steps had been taken along the pathway to meltdown, but fortunately that journey was halted in time."¹² Even NRC admits that Davis-Besse faced a 1% "core damage probability" when, despite the reactor being scrammed,¹³ there was a complete loss of feedwater to steam generators essential for core cooling. NRC's summary of the incident states: "While at 90-percent power, the reactor tripped with main feedwater (MFW) pump "1" tripped and MFW pump "2" unavailable. Operators made an error in initiating the steam and feedwater rupture control system and isolated EFW [emergency feedwater] to both steam generators (SGs). The PORV actuated three times and did not reset at the proper RCS [reactor coolant system] pressure. Operators closed the PORV block valves, recovered EFW locally, and used HPI [high pressure injection] pump "1" to reduce RCS pressure."¹⁴ Such technical language obscures the fact that plant personnel had to sprint through darkened corridors with bolt cutters, not knowing if they had the proper keys or access cards to open locked security doors, in order to cut through chains securing valves, so they could manually open them to restore water flow to steam generators in order to cool the reactor core, with each passing minute increasing the risk of a loss-of-coolant-accident, nuclear fuel damage, and even a meltdown.¹⁵

As Dave Lochbaum at Union of Concerned Scientists clearly relates, Davis-Besse came within 37 minutes of partially uncovering the core of its cooling water supply, and 41 minutes of completely uncovering the core; as he points out, TMI's core was never fully uncovered, but it was uncovered enough to half melt down.¹⁶ As if describing a tense scene from an Indiana Jones movie, Lochbaum also recounts how "Now that the main feedwater pumps and the backup auxiliary feedwater pumps had all crapped out, workers turned to [a dangerously substandard, previously] intentionally disabled motor-driven startup feedwater pump. An operator raced through the plant taking five manual actions in four different locations (including re-installing the fuses)."¹⁷

As summarized by Tom Henry in the *Toledo Blade*, "Davis-Besse experienced a 12-minute interruption in the feedwater flow to steam generators... The potentially catastrophic event idled the plant for more than a year."¹⁸ Henry added "...the Nuclear Regulatory Commission referred to the 1985 accident as the worst since **Three Mile Island in 1979**... A report prepared for the U.S. House Subcommittee on Energy Conservation and Power just days after the June 9, 1985, event suggested that the coolant-water episode at Davis-Besse should not have surprised the NRC. The report said 48 problems concerning Davis-Besse's auxiliary feed-water system had been reported by [FirstEnergy forerunner] Toledo Edison since July, 1979. The plant unexpectedly shut down 40 times between 1980 and 1985 - at least half of those times because of hardware problems and at least nine times because of human error."¹⁹ (emphasis added) Dubbing it "decades of decadence" at Davis-Besse, Lochbaum has emphasized that had *any* of the numerous equipment problems been addressed in a timely manner, rather than multiple simultaneous shortcuts on safety taken and maintenance jobs long deferred, the entire accident could have been avoided.²⁰

In fact, two of the incidents in the early 1980s mentioned by Henry also rose to the level of "significant accident precursors," according to NRC. On April 19, 1980, Davis-Besse lost two essential busses, causing a 1/1000 core damage probability; NRC reported "When the reactor was in cold shutdown, two essential busses were lost due to breaker ground fault relay actuation during an electrical lineup. Decay heat drop line valve was shut, and air was drawn into the suction of the decay heat removal pumps, resulting in loss of a decay heat removal path."²¹ And on June 24, 1981, Davis-Besse lost a vital bus, coupled with the failure of an EFW pump, as

well as a main steam safety valve lifting and failing to reseat. NRC reported "With the plant at 74-percent power, the loss of bus "E2" occurred due to a maintenance error during CRDM [control rod drive mechanism] breaker logic testing. A reactor trip occurred, due to loss of CRDM power (bus "E2"), and instrumentation power was also lost (bus "E2" and a defective logic card on the alternate source). During the recovery, EFW pump "2" failed to start due to a maladjusted governor slip clutch and bent low speed stop pin. A main steam safety valve lifted, and failed to reseat (valve was then gagged).²² This resulted in a 1/500, or 0.2%, core damage probability.²²

In addition, then-owner Toledo Edison was fined for an odd incident not unrelated to the 1985 close call. In a misguided, botched attempt to appease anti-nuclear watchdogs after the loss of coolant accident, a former U.S. Nuclear Navy submarine commander was brought onboard as plant manager, supposedly in order to make Davis-Besse "ship shape." However, his "command and control" approach left a bit to be desired with the public and even his fellow employees, and he left after just a couple of years. The final straw came during the holidays in the mid to late 1980s, when the plant manager entered the Davis-Besse control room visibly drunk, cursing the busy reactor operators, and having to be physically restrained and dragged out by plant security when he tried to pick a fight.²³

Again, the major fiascos of Davis-Besse's first decade of operations would be followed by more.

Direct hit by tornado, June 24, 1998

An F2 tornado, with wind speeds of 113 to 157 miles per hour, scored a direct hit on Davis-Besse, with the funnel cloud passing between the cooling tower and the containment building. The control room operators, running the reactor at 99% power, had little to no advance warning of the twister, until alerted by the guard shack, which had spotted it approaching the plant. Although the reactor was then immediately scrammed, a large amount of radioactive decay heat in the core would need to be actively cooled for many hours, even days. As a safety precaution, operators immediately attempted to initiate the plant's two emergency diesel generators (EDGs). However, the first EDG initially failed to start, and was forced more than once over the course of the next day to be declared inoperable due to overheating of the room housing it. In addition, the second EDG was later declared inoperable "due to an apparent problem with the governor control." This "uncertainty of the operability of the EDGs" was a very serious concern, as the tornado had caused extensive damage to Davis-Besse's electrical switchyard, as well as to the region's electrical transmission lines, leading to a complete loss of offsite power that lasted for nearly 27 hours. Thus, the EDGs were needed to cool the thermally hot core, as well as to cool the irradiated nuclear fuel storage pool, for over a day. Complete failure of both the offsite power supply, as well as the EDGs, could lead to core damage and even a meltdown in a short period of time, as well as boil off of the radioactive waste storage pool's cooling water supply, which could cause spontaneous combustion of the irradiated nuclear fuel within a day or two. Such a reactor meltdown and/or pool fire could result in catastrophic radioactivity releases.²⁴ In addition to the dicey electricity supply to run vital safety and cooling systems, Davis-Besse's emergency alert system and communications were largely destroyed or inoperable. For example, most of the emergency sirens across Ottawa County no longer worked after the electrical distribution system was so severely damaged. Ironically, when needed most, the emergency sirens did not work. Thus, the public would have been "in the dark" had there been radiological releases, and Davis-Besse could not even communicate with the State of Ohio or neighboring counties to coordinate emergency response.²⁵

3/16ths of an inch from a meltdown?! The reactor with a hole in its head, March, 2002

The infamous 2002 "reactor hole-in-the-head" fiasco, due to Davis-Besse's "multiple conditions coincident with reactor pressure vessel (RPV) head degradation" – namely, cracked control rod drive mechanism nozzles, a massive acid corrosion hole through the reactor lid, exacerbated by potential clogging of the emergency sump, as well as degradation of the high-pressure injection (HPI) pumps during core cooling water recirculation – is considered by the U.S. Government Accountability Office as "**the most serious safety issue confronting the nation's commercial nuclear power industry since Three Mile Island in 1979.**"²⁶ (emphasis added) As recently summarized by Tom Henry in the *Toledo Blade*, "...in 2002, Davis-Besse's old nuclear reactor head nearly burst. The lid was weakened by massive amounts of acid that had leaked from the reactor over several years. The acid induced heavy corrosion on top of the head. Radioactive steam would have formed in a U.S. nuclear containment vessel for the first time since the 1979 half-core meltdown of Three Mile Island Unit 2 in Pennsylvania if Davis-Besse's lid had been breached. The only thing preventing that was a thin stainless steel liner that had started to crack and bulge, records show. Correcting the problem kept the Davis-Besse [reactor] idle

a record two years. Federal prosecutors later described the incident as **one of the biggest cover-ups in U.S. nuclear history**. Two former Davis-Besse engineers were convicted of withholding information and put on probation; the utility itself wound up paying a record \$33.5 million in civil and criminal fines"; this represents the **"largest single fine ever proposed by the NRC."**²⁷ (emphasis added)

NRC's own Office of Inspector General concluded that not only FirstEnergy, but also the NRC under the chairmanship of Richard Meserve, had prioritized the nuclear utility company's profits over public safety.²⁸ U.S. Representative Dennis Kucinich (Democrat-Ohio), responding to the GAO report entitled "NRC Needs to More Aggressively and Comprehensively Resolve Issues Related to the Davis-Besse Nuclear Power Plant Shutdown"²⁹ – an investigation he had requested in the first place – said "The General Accounting Office (GAO) Report highlights shocking, serious and dangerous systemic problems at the Nuclear Regulatory Commission (NRC). Problems that call into question whether the agency can, as it is currently run, continue to perform its most fundamental functions-to protect public safety. This report reveals failures at almost every rung of the bureaucratic ladder at the NRC. **The crisis at Davis-Besse is the most serious safety issue to face a commercial nuclear power plant since Three Mile Island.** The GAO report shows that the NRC was ill equipped, ill informed and far too slow to react. The NRC's reaction to Davis-Besse was inadequate, irresponsible and left the public at grave risk."³⁰ (emphasis added)

The Northeast Blackout of 2003 – caused by FirstEnergy's sagging money tree?!

The U.S.-Canada Power System Outage Task Force reported in its "Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations"³¹ – regarding the second biggest power outage in history, affecting 55 million people in 8 U.S. states and Ontario – that the main cause involved FirstEnergy's failure to trim trees in its Ohio service area, combined with extensive maintenance backlogs as well as computer and communications system breakdowns. Could it be that FirstEnergy, in the midst of paying over \$139,200,000 in costs³² (replacement power, repairs, etc.) associated with the hole-in-the-head fiasco (costs which would grow to over \$600 million altogether) at Davis-Besse due to the hole-in-the-head, and facing intense scrutiny by NRC and other government agencies such as the U.S. Department of Justice (which would eventually lead to civil and criminal charges and convictions), was experiencing "cash-flow challenges" and "other distractions" that contributed to these tree-trimming and maintenance backlogs? Ironically, the power outage forced the shutdown of dozens of atomic reactors in the U.S. and Canada – a safety pre-caution during such grid instability.

Two holes in your reactor's head are better than one?! March 12, 2010

Tom Henry has also reported that "Davis-Besse resumed operation in 2004 but was unexpectedly sidelined again for several weeks earlier this year [2010] after a 25-year-old reactor head the utility had installed to replace the original one showed signs of premature aging. Officials said the device was made of an inferior alloy. Several of its metal nozzles became brittle and starting cracking."³³ Lochbaum reports "In March 2010, workers at Davis-Besse discovered indications that two CRDM nozzles in the reactor vessel head purchased to replace the original head that CRDM nozzle leakage damaged beyond repair have through-wall cracks that leaked borated water onto the carbon steel reactor vessel head."³⁴ In all, 24 of the 69 CRDM nozzles were found to have flaws, Henry reports. The new vessel head was supposed to last 15 years, but was failing after just 6 years. Apparently, an inferior metal alloy, now being phased out across the industry, was used in the lid's manufacture, and Davis-Besse inspectors missed the problem when the lid was purchased from Consumers Energy's built, but never operated, Midland nuclear power plant in Michigan.³⁵ Lochbaum points out that The CRDM nozzle leakage identified in 2002 clearly constituted "*significant conditions adverse to quality*" – the NRC imposed the majority of its \$5.45 million record fine for it. This federal regulation required the licensee to take corrective action to preclude recurrence. The 2010 recurrence demonstrates that Criterion XVI (Corrective Action) in Appendix B (Quality Assurance Criteria for Nuclear Power Plants and Fuel Preprocessing Plans) to 10 CFR [Code of Federal Regulations] Part 50 -- had been violated. In response to this latest regulatory violation, on April 5, 2010, Dave Lochbaum at UCS filed a petition with the NRC entitled "Request for Restoration and Maintenance of Adequate Protection of Public Health and Safety at the Davis-Besse Nuclear Plant," citing NRC regulations and requirements that allow for "zero reactor coolant pressure boundary leakage during operation with the requirement to shut down the reactor within six hours if such leakage occurs."³⁶ Despite this, NRC allowed Davis-Besse to return to service in early summer, 2010.

Radioactive Risks Piling Up on the Lake Erie Shoreline

The U.S. Department of Energy (DOE) estimates that Davis-Besse had, by the spring of 2010, generated about 557 tons of highly radioactive irradiated nuclear fuel.³⁷ DOE projects that if Davis-Besse operates for a total of 50 years (till 2027), it will generate over 900 tons of irradiated nuclear fuel.³⁸ If it operated a decade beyond that, as FirstEnergy has applied to do, the reactor would generate yet another 20 to 30 tons of irradiated nuclear fuel annually, or an additional 200 to 300 tons during that additional decade of operations.

Davis-Besse's indoor pool for storing high-level radioactive wastes was "packed to the gills" by the mid-1990s, at which point it proposed loading horizontal outdoor "bunkers" (unfortified) of concrete and steel – "dry" storage casks – to serve as "overflow parking." NRC identified serious problems with 3 of the "NUHOMS" dry storage casks, manufactured by Vectra Technologies (later taken over by Transnuclear, Inc., a subsidiary of the French government owned nuclear giant Cogema, now called Areva) fully loaded with irradiated nuclear fuel at Davis-Besse. The casks were discovered to have been built below technical specifications: the aggregate used to fabricate the casks' outer concrete walls – essential for radiation shielding -- was poor quality, and the steel alloy walls of the inner metallic canisters actually containing the irradiated nuclear fuel were ground too thin along the weld lines, in violation of technical specifications. The Toledo Coalition for Safe Energy challenged the safety and quality assurance of this proposal in 1994, but was overruled by NRC, which allowed loading of casks to begin in 1995. These faulty casks remain fully loaded with high-level radioactive waste onsite at Davis-Besse to this day, 15 years later.³⁹

The vast majority of Davis-Besse's irradiated nuclear fuel is still stored in its pool – vulnerable to cooling water drain downs or boil offs due to accident (such as heavy load drops), natural disaster (such as tornadoes), or intentional terrorist attacks. Without cooling water, wastes in the pool could catch fire within hours, resulting in 25,000 latent cancer deaths, due to large amounts of such hazardous radioactive isotopes as Cesium-137 escaping in the smoke and blowing downwind, depositing lethal fallout as far away as 500 miles.⁴⁰ However, as time goes on, more and more dry casks are being loaded with older irradiated nuclear fuel at Davis-Besse, in order to free up room in the storage pool for the hellishly hot and radioactive rods just removed from the operating reactor core during re-fueling outages.

Dry casks themselves are vulnerable to accidents, are not designed to withstand terrorist attacks, and will eventually degrade with exposure to the elements and need to be unloaded and replaced with new containers.⁴¹ NRC recently updated its "Nuclear Waste Confidence Findings and Rule," asserting that "the nation's spent nuclear fuel can be safely stored for at least 60 years beyond the licensed life of any reactor and that sufficient repository capacity will be available when necessary."⁴² NRC's "confidence" in the opening of a repository is suspect: President Obama has cancelled the proposed Yucca Mountain, Nevada repository, the only "deep geologic" dumpsite to be studied for high-level radioactive waste disposal in the U.S. for the past 23 years. NRC is thus perpetrating a "con game"⁴³ on the American people, and blocking any consideration of irradiated nuclear fuel generation risks in new reactor combined construction and operating license application proceedings, as well as in old reactor license extension proceedings, such as the one now underway at Davis-Besse.

Thus, NRC has already "blessed" high-level radioactive wastes remaining at Davis-Besse for a century, until 2077. If NRC rubberstamps a 20 year license extension, the irradiated nuclear fuel could remain onsite until 2097. However, the NRC Commissioners have also "directed the NRC staff to conduct additional analysis for [even] longer-term storage," ordering staff to submit a "plan to the Commission for the long-term rulemaking by the end of the calendar year [2010]."⁴⁴ Thus, NRC could soon approve irradiated nuclear fuel remaining at Davis-Besse – on the shoreline of the Great Lakes, 20% of the world's surface fresh water, and drinking supply for 40 million people -- for *centuries* into the future, despite the safety, security, health, and environmental risks.

High-level radioactive wastes are one of the most hazardous substances ever generated by humankind. While electricity is but a fleeting byproduct, irradiated nuclear fuel will remain deadly and need to be isolated from the living environment "forevermore."⁴⁵ Without radiation shielding, it can deliver a lethal dose of gamma radiation in seconds or minutes, even decades after removal from the reactor. Alpha particle emitters, however, such as Plutonium-239 -- a microscopic speck of which, if inhaled, could initiate lung cancer -- will remain hazardous for hundreds of thousands of years. Other radioactive isotopes will remain deadly far longer -- Iodine-129, for example, has a 157 million year hazardous persistence.

Ongoing Problems

As shown, Davis-Besse's woes are not confined to the past. Radioactive leaks have occurred in recent years.

On July 31, 2006, FirstEnergy publicly admitted four "occurrences of inadvertent releases of radioactive liquids that had the potential to reach groundwater," adding Davis-Besse to the growing list of 102 reactors in the U.S. that have leaked radioactivity into the environment since the early 1960s (and as the reactor ages, such leaks will become more likely).⁴⁶ These four "inadvertent releases of radioactive liquids" were, specifically:

"[1] Following a primary to secondary leak, contaminated secondary resin was transferred to the South Settling Basin, where it remains. The Davis-Besse South Settling Basin was designed to accept spent resin from backwashed secondary polishing demineralizers. Spent resins from the secondary polishers are no longer directed to this basin. [2] Water from the Backwash Receiver Tank leaked into the ground from a break in a 3-inch line located between the Backwash Receiver Tank and the South Settling Basin. The line break was excavated and repaired, and 7 cubic yards of contaminated soil was sent to a disposal facility. [3] Primary grade water was spilled onto the ground near the Borated Water Storage Tank while draining the Hydrogen Addition System. Approximately 20 cubic yards of contaminated soil was excavated from the area and shipped to a disposal facility. [4] While pumping water from the North Settling Basin to the Collection Box, the discharge hose from the pump fell out of the Collection Box and spilled water containing *Jaw-level* [sic, emphasis added] tritium ($4 \text{ E}+04 \text{ pCi/L}$) [that is $4 \times 10,000$ picoCuries per liter, twice the U.S. Environmental Protection Agency's permissible concentration level for tritium contamination under the Safe Drinking Water Act] onto the ground."⁴⁷

In October, 2008, Davis-Besse admitted an uncontrolled release of tritium – carcinogenic, mutagenic, and teratogenic⁴⁸ – discovered by a fluke when workers checked fire protection systems.⁴⁹

Of course, Davis-Besse – as with every operating reactor in the U.S. -- has permission from NRC, EPA and other government agencies to release radioactivity into air, water, and soil on a "routine" basis,⁵⁰ despite the fact that every radiation exposure, no matter how small, carries a health risk, and those risks are cumulative.⁵¹

Then, on June 25, 2009, an explosion took place in Davis-Besse's electrical switchyard. Well over a year later, NRC is still investigating the accident, criticizing FirstEnergy's response as "too narrow in scope," including its failure to specify how it will prevent such explosions from happening again.⁵²

And in November, 2009, a Davis-Besse security guard inexplicably managed to shoot himself in the leg, calling into question the competence, and even safety risks, associated with the reactor's security force.⁵³

Conclusion

The litany of serious close calls listed above could have led to loss-of-coolant in the Davis-Besse atomic reactor's core, meltdown, and a catastrophic radioactivity release on the Great Lakes shoreline, between Toledo and Cleveland. How bad might that have been in terms of casualties and property damage? The 1982 NRC and Sandia National Lab report, "Calculation of Reactor Accident Consequences," or CRAC-2, found that a major radioactivity release from Davis-Besse could cause 1,400 "peak early fatalities," 73,000 "peak early injuries," and 10,000 "peak cancer deaths." An \$84 billion figure for property damage was given. However, population growth in the past 28 years must be accounted for, which would likely make such casualty numbers even worse today. And when adjusted for inflation to present day dollar values, property damages could now top \$185 billion. And it has recently been revealed that NRC, EPA, and the Federal Emergency Management Agency (FEMA) disagree about which agency would lead the longer term clean up after a major radioactivity release, and where the funding would come from, calling into question disaster planning and severe accident mitigation analysis upon which Davis-Besse's 20 year license extension approval by NRC would be based.⁵⁴

The TMI and Fermi 1 meltdowns, the Davis-Besse Sept. 24, 1977 incident, and the 1986 Chernobyl reactor explosion and fire represent "break-in phase" accidents – new reactors, at significantly elevated risk due to unrecognized design flaws, construction mistakes, or inexperienced operators "working the bugs out" the hard way. Even during "middle age," as shown by Davis-Besse's June 9, 1985 incident – even with more experienced staff and "broken in" systems -- risks still persist at atomic reactors. However, as reactors age and their systems, structures and components degrade and wear out, "break down phase" accident risks significantly increase. Such risks are made even worse as experienced plant personnel retire from the workforce. The year 2000 Indian Point,

NY steam generator tube rupture, as well as the 2002 Davis-Besse hole-in-the-head fiasco, are examples of such "old age" breakdowns.⁵⁵

If the first 34 years have been this troubled, what kind of unpleasant surprises does Davis-Besse have in store in the next several decades? Is an additional 20 years of operations at Davis-Besse, which has already repeatedly experienced more brushes with disaster than almost any other U.S. reactor, worth the risks? Incredibly, 60 years of risky reactor operations and radioactive waste generation at Davis-Besse may be just the beginning. The nuclear power industry, NRC, DOE, and national nuclear labs are now pushing for 80 years of operations at U.S. atomic reactors.⁵⁶ Will the radioactive Russian roulette at Davis-Besse end before it's too late? Davis-Besse should be shut down as soon as possible, and replaced with safe, secure, clean, reliable, and ever more cost competitive energy efficiency⁵⁷ and renewable alternatives⁵⁸ such as wind⁵⁹ and solar power.⁶⁰

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For more information, contact Beyond Nuclear's Radioactive Waste Watchdog, Kevin Kamps, by calling (301) 270-2209x1, or emailing kevin@beyondnuclear.org. You can also check out Beyond Nuclear's website at www.beyondnuclear.org.

Endnotes

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² See NRC's Status of License Renewal Applications and Industry Activities at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>.

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¹² David Lochbaum, "Davis-Besse: Back to the Future," Issue Brief, Union of Concerned Scientists, http://www.ucsusa.org/assets/documents/nuclear_power/20050609-db-ucs-background-feedwater-event.pdf.

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¹⁶ Lochbaum, "Davis-Besse: Back to the Future," *ibid.*

¹⁷ Lochbaum, "Davis-Besse: Back to the Future," *ibid.*

¹⁸ Tom Henry, *Toledo Blade*, "Public asked for its input on license extension at Davis-Besse: Nuclear plant seeks OK for 20 more years," Nov. 1, 2010, <http://www.toledoblade.com/article/20101101/NEWS16/10310341>.

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²⁶ U.S. General Accounting Office, Report to Congressional Requestors, "NUCLEAR REGULATION: NRC Needs to More Aggressively and Comprehensively Resolve Issues Related to the Davis-Besse Nuclear Power Plant's Shutdown," GAO-04-415, May 2004.

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http://www.ucsusa.org/nuclear_power/nuclear_power_risk/safety/walking-a-nuclear-tightrope.html, provides a detailed chronicle of Davis-Besse's over two year shutdown.

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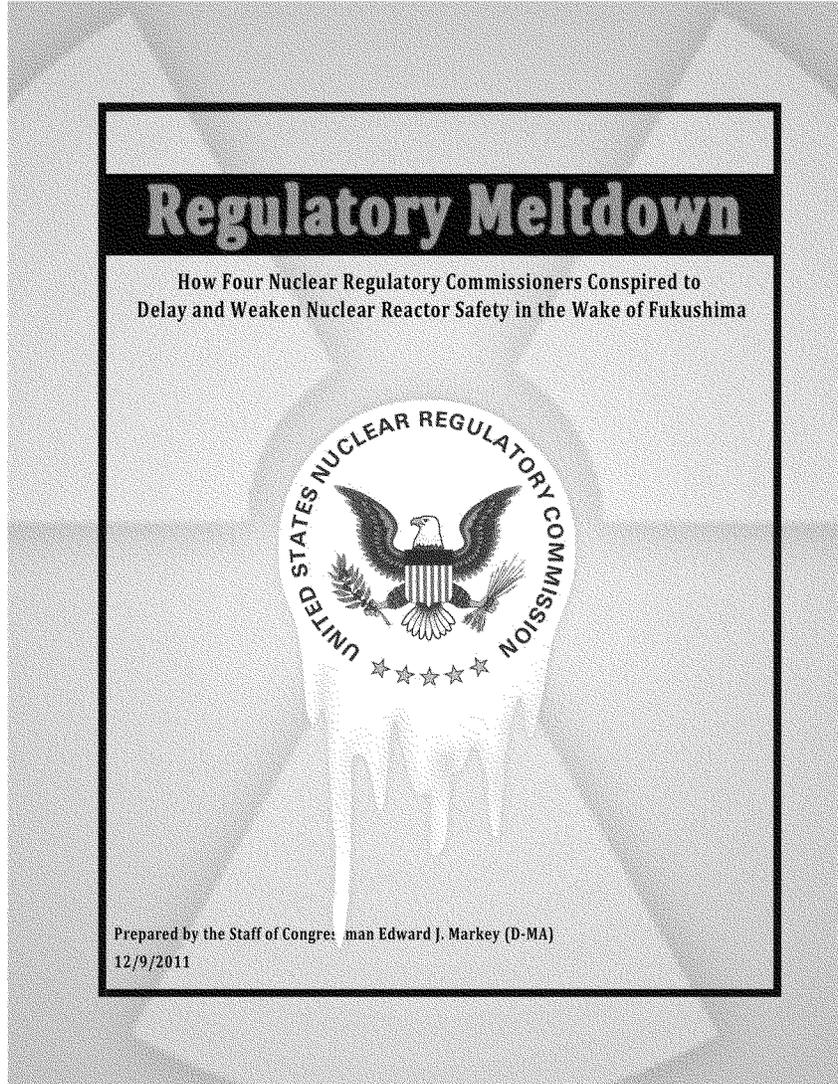
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⁶⁰ Toledo area companies pioneering solar panel manufacture include Willard & Kelsey Solar Group LLC (<http://wksolargroup.com/>) in Perrysburg, Ohio, Xunlight Corp. in Toledo (<http://www.xunlight.com/>), and First Solar Inc. (<http://www.firstsolar.com/en/index.php>), which is based in Arizona but has its only North American factory in Perrysburg Township, Ohio.



Regulatory Meltdown
How Four Nuclear Regulatory Commissioners Conspired to Delay and Weaken Nuclear Reactor Safety in the Wake of Fukushima



Prepared by the Staff of Congressman Edward J. Markey (D-MA)
12/9/2011

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Executive Summary

In the wake of the meltdowns at the Fukushima Daiichi Nuclear Power Plant, Congressman Edward J. Markey (D-Mass.) issued a report,¹ numerous letters² and introduced legislation³ all aimed at highlighting potential safety vulnerabilities and accelerating the implementation of the needed safety enhancements. Congressman Markey was particularly concerned that the Commission was moving too slowly to adopt these new measures.

In late October 2011, Congressman Markey sent a letter to the Nuclear Regulatory Commission (NRC) requesting copies of all documents (including voting records, reports, emails, correspondence, memoranda, phone or meeting minutes or other materials) related to the events of Fukushima or the NRC's response thereto prepared or obtained by any Commissioner or member of any Commissioner's staff. While most Commissioners marked every single document – including articles that appeared in the public media – to be not for public release – this narrative is an effort to provide a summary of the thousands of pages of materials that were responsive to that request. The review of these materials indicates that:

1. Four NRC Commissioners attempted to delay and otherwise impede the creation of the NRC Near-Term Task Force on Fukushima.
2. Four NRC Commissioners conspired, with each other and with senior NRC staff, to delay the release of and alter the NRC Near-Term Task Force report on Fukushima.
3. The other NRC Commissioners attempted to slow down or otherwise impede the adoption of the safety recommendations made by the NRC Near-Term Task Force on Fukushima.
4. NRC Chairman Greg Jaczko kept the other four NRC Commissioners fully informed regarding the Japanese emergency, despite claims to the contrary made by these Commissioners.
5. A review of emails and other documents indicates high levels of suspicion and hostility directed at the Chairman.
6. The consideration of the Fukushima safety upgrades is not the only safety-related issue that the other NRC Commissioners have opposed.

¹ <http://markey.house.gov/docs/05-12-11reportfinalsmall.pdf>

² http://markey.house.gov/docs/3-11-11_nrc_japan_letter.pdf
<http://markey.house.gov/docs/03-13-11ejmtopotusemergencyresponse.pdf>
http://markey.house.gov/docs/letter_to_holdren_3-14-11.pdf
http://markey.house.gov/docs/ejm_capps_nrc_letter_03.15.11.pdf
http://markey.house.gov/docs/ltr_to_sec_sebelius_3-16-11.pdf
http://markey.house.gov/docs/worst_case_nrc_letter_03.18.11.pdf
<http://markey.house.gov/docs/4.15.11.nrc.pdf>
http://markey.house.gov/docs/05092011_ki.pdf
http://markey.house.gov/docs/nrc_gdc_letter_1_07.14.11.pdf
<http://markey.house.gov/docs/07-21-11ejmtomagwoodsvinicki.pdf>
http://markey.house.gov/images/2011-08-24_jazkoletter.pdf
http://markey.house.gov/docs/sept_8_2011_ltr_to_nrc.pdf

³ http://markey.house.gov/index.php?option=com_content&task=view&id=4286&Itemid=141

Background on emergency authority at the Nuclear Regulatory Commission

After the 1979 Three Mile Island (TMI) nuclear accident and the failures in communication and other response activities, the President's Commission on the accident at TMI chaired by John G. Kemeny ("the Kemeny Commission") made numerous findings related to the NRC's response to the accident, including one that states "With its present organization, staff, and attitudes, the NRC is unable to fulfill its responsibility for providing an acceptable level of safety for nuclear power plants⁴." It also found that "The quality of information provided to the public in the event of a nuclear plant accident has a significant bearing on the capacity of people to respond to the accident, on their mental health, and on their willingness to accept guidance from responsible public officials," and "Neither Met Ed nor the NRC had specific plans for providing accident information to the public and the news media."⁵

In 1980, Congress enacted legislation to reorganize the NRC in the wake of the Kemeny Commission's report.⁶ That legislation set out the responsibilities of the five NRC Commissioners, and additionally delegated specific responsibilities to the Chairman. Among other provisions, the law states that:

- "The Chairman shall be the official spokesman for the Commission,"
- "there are hereby transferred to the Chairman all the functions vested in the Commission pertaining 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 the civil authorities, and the public, directing, and coordinating actions relative to such emergency incident."
- "To the maximum extent possible under the emergency conditions, the Chairman or other member of the Commission delegated authority under subsection (b), shall inform the Commission of actions taken relative to the emergency."
- "(d) Following the conclusion of the emergency, the Chairman, or the member of the Commission delegated the emergency functions under subsection (b), shall render a complete and timely report to the Commission on the actions taken during the emergency."

After the terrorist attacks of September 11, 2001, NRC Chairman Richard Meserve activated the NRC's Emergency Operations Center and directed NRC staff to review the NRC's security regulations and procedures⁷. Although the September 11 attacks did not occur at a

⁴ http://www.pddoc.com/tmi2/kemeny/nuclear_regulatory_commission2.htm

⁵ http://www.pddoc.com/tmi2/kemeny/publics_right_to_information.htm

⁶ <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0980/ml022200075-vol1.pdf>

⁷ <http://www.nrc.gov/reading-rm/doc-collections/congress-docs/congress-testimony/2002/04-11-02SecTestimony.pdf>

nuclear power plant, the NRC Chairman evidently used his emergency powers to direct the early response and policy review by the Commission and its staff.

Chairman Jaczko kept the four other Commissioners fully informed regarding the Japanese emergency, despite claims to the contrary made by these Commissioners.

After the earthquake and tsunami struck on March 11, the NRC's headquarters Operations Center began to monitor the situation on a 24-hour basis in accordance with the 1980 NRC reorganization act⁸. This occurred in keeping with NRC policy guidance, which states that the 1980 reorganization plan gives the "Chairman sole discretion to determine when to declare an emergency."⁹ That plan also states that "it is recommended that the Chairman provide notice to the other Commissioners and the NRC staff that an emergency status... has been entered. Such notice allows the staff to be cognizant that they should follow Chairman directives rather than await the normal Commission decision-making processes."

On May 4, Commissioners Kristine L. Svinicki and William D. Magwood told the House Energy and Commerce Committee that they had never been informed of the Chairman's decision to move to emergency status, while Commissioner William C. Ostendorff stated that he had not been "fully" informed though he had discussed the topic with Chairman Jaczko on March 31.¹⁰ Similar statements were made by all four NRC Commissioners at a June 16 hearing of the Senate Environment and Public Works Committee.

These assertions have also been made in less public ways. For example, on March 30, 2011 at 11:40 AM., Oklahoma Senator James Inhofe's staff emailed the other four NRC Commissioners' chiefs of staff asking, "As soon as possible, please provide the date, time and manner in which Chairman Jaczko informed your commissioner of his declaration of his exercise of emergency authority. Please include any information the Chairman providing [sic] his expectations regarding the duration of this emergency situation and his plan for returning the agency to a non-emergency status. Please include the date, time, and manner in which your commissioner indicated his approval to Chairman Jaczko."

In response to this request, Commissioner Ostendorff's staff indicated that he was informed on March 17 by one of Chairman Jaczko's staff that "the [NRC] operations center is activated and taking direction from the Chairman, but no policy functions have been transferred to the Chairman."¹¹ Commissioner Magwood's staff indicated that "Commissioner Magwood has not been informed by the Chairman that a declaration of emergency authority has been invoked. The Chairman has not provided notice to the Commission, either verbally or in writing, that an emergency status has been entered."¹² Commissioner Svinicki's staff indicated that

⁸ See, for example, the September 24, 2011 letter from NRC to Senator Jeff Sessions

⁹ <http://www.nrc.gov/about-nrc/policy-making/icp-chapter-1-2011.pdf#page=9>

¹⁰ http://democrats.energycommerce.house.gov/sites/default/files/image_uploads/Transcript_05.04.11_Hearing_EE-EP.pdf

¹¹ March 30, 2011 11:44 AM email from Ho Nieh to Annie Caputo

¹² March 30, 2011 3:02 PM email from Patrice Bubar to Annie Caputo

“Commissioner Svinicki has not been informed by Chairman Jaczko of any declaration of an emergency or the Chairman’s invocation of emergency response authority.”¹³

Yet an examination of internal NRC emails and other documents clearly demonstrate that these assertions are patently untrue:

- Following the Japanese earthquake and tsunami, an email (Attachment 1) was sent to the chiefs of staff of all NRC Commissioners at 9:34 AM on March 11 reporting that “NRC HQ and Region IV are monitoring the potential impact of tsunamis impacting NRC licensees and licensed materials.”¹⁴
- When the NRC entered emergency monitoring mode, meaning that the emergency authority contemplated in the 1980 NRC reorganization had automatically shifted to the Chairman, an email (Attachment 1) was sent informing all Commission offices that this had occurred 23 minutes later, at 10:09 AM, stating that “the NRC is in the Monitoring Response Mode as of 0946 on 3/11/11”¹⁵, and the first briefing of Commissioner staff took place just over three hours later (Attachment 1).¹⁶ In the first 24 hours following the earthquake, four Commissioner staff briefings occurred.¹⁷
- On March 11 at 7:43 PM Chairman Jaczko emailed (Attachment 1) the other Commissioners letting them know that the NRC was continuing to monitor the evolving situation in Japan and that he would keep them updated as best as possible.¹⁸
- Chairman Jaczko personally briefed his colleagues regularly, including full Commission briefings on March 12, 13, 14, 15, 17, 18, 26, 30, 31, and April 7. These regular full Commission briefings were cancelled when the other Commissioners ceased participating in them. Additionally, Chairman Jaczko held personal meetings or calls with Commissioner Apostolakis (March 11, 24, 25), Commissioner Ostendorff (March 20, 21, 31, April 7), Commissioner Svinicki (March 23, 30) and Commissioner Magwood (March 26).¹⁹
- Regular briefing calls were also held for Commissioners’ staffs (see Attachment 1 for the scheduling announcements for some of these briefings), every eight hours through March 15, every 12 hours through March 31, daily through April 10 and then twice weekly

¹³ April 1, 2011 1:56 PM email from Jeffrey Sharkey to Annie Caputo

¹⁴ March 11, 2011 9:34 AM from John Monninger to Jeffrey Sharkey, Belkys Sosa, Patrice Bubar, Neha Dhir, and Ho Nieh

¹⁵ March 11, 2011 10:09 AM email from Joe O’Hara

¹⁶ See, for example, the September 24, 2011 letter from NRC to Senator Jeff Sessions

¹⁷ See, for example, the September 24, 2011 letter from NRC to Senator Jeff Sessions

¹⁸ March 11, 2011 7:43PM email from Greg Jaczko to the other 4 NRC Commissioners

¹⁹ See, for example, the September 24, 2011 letter from NRC to Senator Jeff Sessions

through May 16.²⁰ The Commissioners' staffs often took detailed notes on the information received from these calls and shared them with the Commissioners for whom they worked, all of which were reviewed by Rep. Markey's staff.

- The NRC Office of International Programs circulated daily news clips on the disaster and weekly updates (that sometimes included information on the disaster) to all Commission offices. Rep. Markey's office reviewed 287 pages news clips and 65 pages of weekly updates that had also been provided to the rest of the Commission.
- Each day (and more than daily during the early stages of the crisis), "situation reports" detailing all developments were sent to all Commission offices.²¹

Yet at the same time that the Commissioners were provided with regular updates, the Commissioners and their staffs were complaining amongst themselves and were overtly suspicious of the Chairman's intent and actions.

- For example, after a March 18, 2011 telephone call, several of the Commissioners' staffs emailed each other with comments such as "what a bunch of s—t", "I detected a significant amount of a—kissing", "that was a bunch of Barbra Streisand."²²
- Following the March 27 8 PM conference call at which Commissioner Svinicki's chief of staff took and circulated extensive notes, her chief of staff emailed the Commissioner stating that he was "at a loss on understanding how the Commission is being kept fully and currently informed."²³
- On April 16, Chairman Jaczko's chief of staff tried to arrange a conference call for the Chairman to brief the other Commissioners on some new information related to Japan.²⁴ Commissioner Svinicki's staff wondered to Commissioner Svinicki why the call couldn't just be with staff rather than with Commissioners.²⁵

²⁰ See, for example, the September 24, 2011 letter from NRC to Senator Jeff Sessions

²¹ As an example, more than 220 pages of these documents can be found at <http://pbadupws.nrc.gov/docs/ML1122/ML11229A190.pdf> and <http://pbadupws.nrc.gov/docs/ML1129/ML11294A327.pdf>

²² March 18, 8:30 PM emails to and from Belkys Sosa, William Orders, Patrick Castleman, and Mike Franovich

²³ March 27, 2011 9:58 PM email from Jeffrey Sharkey to Kristine Svinicki

²⁴ April 16, 2011 8:112 AM email from Josh Batkin to Annette Vietti-Cook

²⁵ April 16, 2011 3:01 PM email from Patrick Castleman to Kristine Svinicki

Four NRC Commissioners attempted to delay and otherwise impede the creation of the NRC Near-Term Task Force on Fukushima

On March 17 2011, Chairman Jaczko circulated a draft document²⁶ calling for the creation of a senior NRC Task Force to study the Fukushima accident to provide recommendations to the NRC related to what additional safety and enforcement measures should be taken to ensure the safety and resiliency of U.S. nuclear power plants. He proposed that the full Commission meet publicly on March 21 to approve the document, and asked for the other Commissioners to review it in advance. On March 19, following a 10:13 AM email from NRC's Executive Director for Operations Bill Borchardt to the Chairman that suggested some specific methodological steps the Task Force could take, the Chairman solicited input from the other four Commissioners on Mr. Borchardt's proposal.²⁷ On March 20, 2011, the Chairman sent another email (Attachment 1) to the rest of the Commission that included a revised proposal for the Task Force that incorporated feedback he had received, some additional documents intended to support the proposal to create the NRC Near-Term Task Force, and a request that they provide him with any feedback.²⁸

Private communications between the Commissioners and their staffs indicate a desire to disparage, delay or otherwise impede the Chairman's efforts:

- In a March 17, 2011 report to his staff on a 4 PM call with Chairman Jaczko, Commissioner Magwood said that "it's now pretty obvious that [the Chairman] plans to keep the Commission out of this entire exercise," and that the Chairman's statement that the recommendation to evacuate U.S. citizens within 50 miles of the Fukushima reactors came as a surprise to Chairman Jaczko "wasn't credible."²⁹
- On March 17, 2011, Commissioner Magwood's staff suggested to him that "we should try to get two other offices to agree that we use an exemption to close the [March 21 public] meeting." If the meeting remained an 'agenda planning meeting', she noted, as opposed to a closed meeting, "the Chairman maintains control."³⁰ Commissioner Magwood ended up approving the agenda planning meeting, but suggested further coordination among the other Commissioners.
- On March 17, 2011, Commissioner Magwood emailed Commissioner Svinicki on the proposal, stating "my reaction is that it is pretty clear that there is no expectation that the

²⁶ <http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secv/2011/2011-0002comgbj-vtr.pdf>

²⁷ March 19, 2011 10:13 AM email from Bill Borchardt to Greg Jaczko and 12:37 PM email forwarding the Borchardt proposal to the rest of the NRC Commissioners

²⁸ March 20, 2011 7:42 PM email from Greg Jaczko to the other 4 Commissioners

²⁹ March 17, 2011 5:28 PM email from Bill Magwood to Patrice Bubar and William Orders

³⁰ March 17, 2011 10:38 PM email from Patrice Bubar to Bill Magwood

Commission will play a substantive role in this exercise.... We should coordinate in advance to make sure the [other Commissioners] is of the same mind.”³¹

- On March 19, 2011, Commissioner Svinicki sarcastically emailed her staff, in response to the Chairman’s request for input on the Borchardt proposal, “apparently all U.S. Laws have been suspended for this ‘emergency’”³² and, “I can’t see why this needs to be agreed to before Monday.”³³
- On March 20, 2011, in response to the Chairman’s email he sent directly requesting input on draft Near-Term Task Force documents (as opposed to having such a request be submitted by NRC staff), Chairman Magwood emailed his staff sarcastically saying “procedures? Who needs procedures?”³⁴

It took until Wednesday, March 23 for the Commission to approve a modified version of the Chairman’s proposal. A look at the Commissioners’ individual voting records³⁵ indicates that:

- Commissioner Magwood, in his first vote on the proposal, removed the phrase “The report would be released to the public per normal Commission processes” and replaced it with “The report would be released to the public subsequent to its approval by the Commission.” Commissioner Apostolakis concurred with that position.
- Commissioner Svinicki’s first vote states that “this crisis has not created an emergency in the United States, and the Commission and the staff should adhere to existing protocols.” She also expressed agreement with the edits to the proposal made by Commissioners Magwood and Apostolakis.

The final document³⁶ approved by the Commission indicates that the Chairman Jaczko evidently brokered a compromise between his proposal, which would have allowed for the automatic and public release of the results of the investigation, and Commissioners’ Magwood, Apostolakis and Svinicki’s views that the Commission first “approve” its public release, which could have led to both delays in public awareness regarding its findings, as well as to edits to the document by the Commission prior to its release. These concerns were noted in a March 22, 4:41 PM email (Attachment 1) from Chairman Jaczko to the other four Commissioners that stated, “I have concerns with the current majority position to only release publicly the task force reports after the commission approves them.” Commissioner Apostolakis also noted that the Chairman had concerns that issuing the reports to the public after the Commission reviews them

³¹ March 18, 2011 7:09 AM email from Bill Magwood to Kristine Svinicki

³² March 19, 2011 2:37 PM email from Kristine Svinicki to Jeffrey Sharkey and Darani Reddick

³³ March 19, 2011 12:57 PM email from Kristine Svinicki to Jeffrey Sharkey and Darani Reddick

³⁴ March 20, 2011 8:42 PM email from Bill Magwood to Patrice Bubar

³⁵ <http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secv/2011/2011-0002comgbj-vtr.pdf>

³⁶ <http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secv/2011/2011-0002comgbj-srm.pdf>

“may create the impression the commission will sanitize the reports.”³⁷The final document reads “The report would be released to the public per normal Commission processes (including its transmission to the Commission as a Notation Vote Paper).”

Following the release of Chairman Jaczko’s vote approving the creation of the NRC Near-Term Task Force, Commissioners Magwood and Svinicki continued to privately gripe. In a March 25, 2011 1:57 PM email to Commissioner Magwood, Commissioner Svinicki stated, about the Chairman’s vote, “what was that you were saying earlier about reasonable people being reasonable? I’ve forgotten now.” In response, Commissioner Magwood stated “What color is the sky on his planet?”

³⁷ March 22, 2011 1:32 PM email from Commissioner Apostolakis to Michael Snodderly and Belkys Sosa

Four NRC Commissioners conspired, with each other and with senior NRC staff, to delay the release of and alter the NRC Near-Term Task Force report on Fukushima

According to the Commission-approved document that created the NRC staff Task Force³⁸, the Task Force report was supposed to be transmitted directly to the Commission when it was complete, 90 days after the creation of the Task Force. All input from other NRC staff and external stakeholders was intended to be obtained later.

It is clear from a review of emails and other documents that some of the Commissioners, having discussed their concerns about the contents of the Near-Term Task Force report amongst themselves before it was formally completed and submitted, worked with some NRC staff to alter the materials the Commission would be asked to vote on. They also attempted to delay its release both to Congress and the public.

According to emails reviewed by Rep. Markey's staff, Marty Virgilio, NRC's Deputy Executive Director for Reactor and Preparedness Programs and a member of the NRC Near-Term Task Force, briefed Commissioner Bill Magwood and two other Commissioners the week of June 27, 2011, approximately two weeks before the report was released. After that briefing, Commissioner Magwood's staff told Commissioner Ostendorff's staff that Commissioner Magwood would be requesting time to "let him know of his concerns with how this is shaping up."³⁹ Commissioner Svinicki apparently was also "quite concerned about its rumored content."⁴⁰

On June 29, all Commissioners were sent a draft of a charter and timeline associated with the release of the NRC Fukushima Near-Term Task Force report. The charter included Chairman Jaczko's proposal that the report be transmitted to the Commissioners and to Congressional Committees on July 12, and then released publicly the next day.

On July 4, Commissioner Magwood was informed by his staff that the proposed schedule would "not leave time for deliberation before the public views the report."⁴¹ Additionally, his staff advised him that although he had committed to support the transmission of the report to Congressional Committees on the same day it was transmitted to Commissioners during a June 16th hearing of the Senate Environment and Public Works Committee, his staff felt he had some "wiggle room as far as whether the Commission needs to agree" with the proposed timeline that provided for the report to be transmitted to Congressional Committees at the same time that it was transmitted to the Commission.⁴² His staff suggested that the Commissioners turn the release of the Near-Term Task Force report into a voting matter to "release the report to the

³⁸ <http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secv/2011/2011-0002comgbj-srm.pdf>

³⁹ July 1 2011 8:10 AM email from Patrice Bubar to Ho Nieh

⁴⁰ July 8, 2011 5:42 AM email from Ho Nieh to Sunny Bozin and Mike Franovich

⁴¹ July 4 2011 3:35 PM email from Patrice Bubar to Bill Magwood

⁴² July 5, 2011 12:58 PM email from Patrice Bubar to Bill Magwood and Margaret Bupp

public 10 days after the Commission received it and to control release of the report to the Committee to the same time as it is released to the public.”

Commissioner Magwood then instructed his staff to discuss the matter with other Commissioners’ staffs.⁴³ Although the NRC had already rejected Commissioner Magwood’s proposal⁴⁴ to publicly release the Near-Term Task Force report only after it had been approved (and, presumably, edited) by a majority of the Commissioners, Commissioner Magwood began to attempt to prevent its release to Congress and the public anyway.

On July 5, Commissioner Magwood’s chief of staff sent an email to the three other Commissioners’ chiefs of staff expressing the concern that the Near-Term Task Force report was being publicly released too quickly and that it was being “provided to the Committees before the Commission even has a chance to review it”. She indicated that she had suggested to Commissioner Magwood that the Commission either disapprove the plan for the Task Force report or turn it into a voting matter “to allow the Commission to have more influence over the timing of the release of the report.” She asked her colleagues to let her know if their bosses could support this proposal.⁴⁵ Commissioner Svinicki’s staff recommended that she support the “underlying intent” of Commissioner Magwood’s proposal.⁴⁶

When it became clear that the Commission would not provide majority support for the Chairman’s proposal to release the Near-Term Task Force report on July 13, the NRC staff itself – as opposed to the NRC Chairman – sent a July 8 request to the Commissioners requesting the July 13 public release of the Task Force report. This request was approved by a majority of the Commissioners on the evening of July 12.

As the Near-Term Task Force report was being finalized, Bill Borchardt, NRC’s Executive Director for Operations, attached his own views to the report so that the five Commissioners would be asked to vote on his views in addition to the contents of the Task Force report itself. This happened despite the NRC vote to have the report transmitted absent such materials so that the Commission could vote on the report alone⁴⁷. Additionally, a July 11 email from Marty Virgilio, NRC’s Deputy Executive Director for Reactor and Preparedness Programs to Chairman Jaczko (Attachment 1) indicated that the document forwarding “the Task Force report will have no [NRC Executive Director for Operations] analyses or recommendations.”⁴⁸

⁴³ July 5, 2011 1:16 PM email from Bill Magwood to Patrice Bubar and Margaret Bupp

⁴⁴ <http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secv/2011/2011-0002comgbj-vtr.pdf>

⁴⁵ July 5, 2011 1:50 PM email from Patrice Bubar to Jeffrey Sharkey, Belkys Sosa and Ho Nieh

⁴⁶ July 5, 2011 2:08 PM email from Jeffrey Sharkey to Kristine Svinicki

⁴⁷ July 29, 2011 letter from Chairman Jaczko to Congressman Darrell Issa

⁴⁸ July 11, 2011 5:51 PM email from Marty Virgilio to Chairman Jaczko

Nevertheless, Mr. Borchardt attached a 5 page memo⁴⁹ to the Near-Term Task Force report that, in addition to summarizing some of the background on the Task Force and emphasizing that U.S. nuclear power plants were unlikely to experience the same problems as the Fukushima power plant had, also recommended that “before deciding on the path forward and the specific recommendations in the Task Force’s report, the Commission may wish to solicit external stakeholder input” and that there would be a benefit “to developing alignment on the objectives, approaches and schedules [with that of external stakeholders] for implementing safety improvements.”

When Mr. Borchardt’s views were removed on July 12, Chairman Jaczko contacted all the other Commissioners to explain why that had occurred, and none raised any concerns directly to him.⁵⁰ Despite this, staff for Commissioners Magwood and Svinicki contacted⁵¹ Mr. Borchardt and other NRC staff, and learned that Mr. Borchardt informed the Chairman that he planned on making his objection to the removal of his views public.⁵²⁻⁵³ Commissioner Magwood’s chief of staff also contacted Commissioner Apostolakis’ chief of staff requesting her boss’s support for a proposal to have the Commission send the Task Force report to Mr. Borchardt so that he could provide the Commission with his views.⁵⁴ Commissioner Svinicki subsequently attempted to directly ascertain what the contents of Mr. Borchardt’s views were,⁵⁵ and ultimately incorporated some of them into her vote on the Task Force report.

On July 11, 2011 Commissioners’ staff were formally offered a briefing⁵⁶ on the Near-Term Task Force report. This offer followed other requests from Commissioner staff for such a briefing to occur prior to briefings that would be provided to other non-NRC parties.

On the evening of July 12, the chiefs of staffs of all NRC Commissioners were sent⁵⁷ a copy of the draft press release on the NRC Near-Term Task Force report that was to be sent the following day, although typical Commission procedure states that circulation of such drafts an

⁴⁹ July 12, 2011 memo from R.W. Borchardt to the 5 NRC Commissioners entitled “NEAR-TERM REPORT AND RECOMMENDATIONS FOR AGENCY ACTIONS FOLLOWING THE EVENTS IN JAPAN”

⁵⁰ July 29, 2011 letter from Chairman Jaczko to Congressman Darrell Issa

⁵¹ July 12, 2011 10:11 PM email from Patrice Bubar to Marty Virgilio, and July 13, 2011 6:10 AM email from Jeffrey Sharkey to Bill Borchardt and Marty Virgilio.

⁵² July 8 2011 12:43 PM email from Patrice Bubar to Bill Magwood.

⁵³ July 13, 2011 7:01 AM email from Bill Borchardt to Jeffrey Sharkey.

⁵⁴ July 11, 2011 3:50 PM email from Patrice Bubar to Belkys Sosa

⁵⁵ July 15, 2011 11:41 AM email from Kristine Svinicki to Bill Borchardt and Marty Virgilio.

⁵⁶ July 7 2011 4:45 PM email from Richard Laufer to a large number of NRC and Commissioner staff.

⁵⁷ July 12, 2011 8:04 PM email from Eliot Brenner to Joshua Batkin, Jeffrey Sharky, Belkys Sosa, Patrice Bubar and Ho Nieh

hour in advance is recommended as a “collegial practice.”⁵⁸ Early the next morning, Commissioner Magwood sent his comments to Chairman Jaczko, stating that “someone reading this would think that every reactor in the country is a time bomb waiting to go off” and that the press release was “almost breathless.”⁵⁹ The other three NRC Commissioners were copied on this email, and Commissioner Svinicki quickly echoed Commissioner Magwood’s views. Commissioner Magwood referred to the draft press release as “irresponsible” in an email to Commissioner Ostendorff.⁶⁰

As it turned out, due to a leak of the Near-Term Task Force report on July 12, the NRC public affairs office also shared the draft press release that evening with reporters who had obtained the report itself. No suggested edits were accepted, in keeping with the 1980 NRC reorganization act which provides that the Chairman is exclusively responsible for communicating with the public during an emergency.⁶¹

⁵⁸ <http://www.nrc.gov/about-nrc/policy-making/icp-chapter-1-2011.pdf#page=8>

⁵⁹ July 13 2011 7:00 AM email from Bill Magwood to Greg Jaczko

⁶⁰ July 13, 2011 8:20 Am email from Bill Magwood to Bill Ostendorff

⁶¹ <http://www.nrc.gov/about-nrc/policy-making/icp-chapter-1-2011.pdf#page=9>

The other NRC Commissioners attempted to slow down or otherwise impede the adoption of the safety recommendations made by the NRC Task Force on Fukushima

After the Task Force report was released, the Commissioners' attention turned to the scheduled July 19 NRC meeting on the report's contents. The other NRC Commissioners continued to explore ways to delay action on adoption of the Task Force recommendations. Commissioner Magwood even speculated that the effort to schedule this meeting after Chairman Jaczko's planned appearance at the National Press Club on July 18 "sounds like a scam to forestall votes until he makes his speech."⁶²

On July 15 2011, Commissioner Magwood and Commissioner Ostendorff emailed one another regarding their concerns with the Chairman's desire to have the Commission vote on how to move forward with each of the Task Force recommendations within 90 days.⁶³ On July 16, Commissioner Ostendorff's chief of staff emailed the chiefs of staff of Commissioners Magwood and Svinicki saying that "the Commission needs to regain control of things" and proposing that the other Commissioners propose a vote on an alternative plan for the Near-Term Task Force report consideration than the one proposed by Chairman Jaczko. Chairman Magwood's chief of staff then replied that in her view, the way to do that would be to vote to send the entire Task Force report "back to the staff," "not support any of the meetings proposed by the Chairman," as well as other measures designed to "regain control".⁶⁴

On July 17, Commissioner Ostendorff's chief of staff emailed⁶⁵ the chiefs of staff for Commissioners Apostolakis, Svinicki and Magwood that he proposed that the Commission not vote to adopt any of the Task Force recommendations or even decide on whether to hold additional meetings on the subject matter until the views of additional NRC staff were understood, and until the Commission voted on a longer-term task NRC staff charter. He requested the support of the other three Commission offices. In response, Commissioner Svinicki's staff indicated that he believed that the majority of the Commissioners were in alignment with that approach, and that Commissioner Svinicki had informed Commissioners Apostolakis, Magwood and Ostendorff that she believed the Task Force recommendations should be referred to a second group of NRC staff charged with taking a longer-term look at the accident.⁶⁶ Commissioner Magwood's staff then emailed Commissioner Svinicki's staff, asking whether he thought that Commissioner Ostendorff was on the same page as Commissioners Svinicki and Magwood "as far as turning the report back to the staff, not agreeing to any meetings proposed by [Chairman Jaczko] and putting this whole thing back in process?"⁶⁷

⁶² July 12, 2011 7:47 AM email from Bill Magwood to Patrice Bubar

⁶³ July 15, 2011 8:08 AM email from Bill Magwood to Bill Ostendorff and the July 15, 2011 12:29 PM response.

⁶⁴ July 17 2011 12:04 PM email from Patrice Bubar to Ho Nieh and Jeffrey Sharkey

⁶⁵ July 17, 2011 12:04 PM email from Ho Nieh to Jeffrey Sharkey, Patrice Bubar and Belkys Sosa

⁶⁶ July 17, 2011 1:28 PM email from Jeffrey Sharkey to Ho Nieh, Patrice Bubar and Belkys Sosa.

⁶⁷ July 17, 2011 1:55 PM email from Patrice Bubar to Jeffrey Sharkey

Commissioner Apostolakis's chief of staff noted in an email to the Commissioner regarding the strategy put forward by Commissioner Ostendorff's office that "it is hard to find any pros with [Chairman Jaczko's] proposed path forward."⁶⁸

In late July, the NRC Commissioners submitted their initial votes on the Near-Term Task Force report. Chairman Jaczko voted⁶⁹ in support of completing the implementation of all 12 recommendations made by the Task Force within five years and proposed that the Commission vote on whether to implement each of them within 90 days⁷⁰. A review of the other Commissioners' votes indicates a much different approach. For example, Commissioners Magwood and Svinicki voted⁷¹ to require a new group of NRC staff to submit plans for how they would go about evaluating the NRC staff Task Force recommendations and how they would obtain stakeholder input. These plans for how to evaluate the recommendations would themselves need to be voted on by the Commission before any of the technical evaluation could itself begin.

On August 19, the NRC finally obtained majority support for a plan⁷² that directed the NRC staff to provide the Commission with a document within 21 days that would specify which Task Force recommendations could be implemented without delay, and would also include a plan for longer-term review. This document would then be voted on by the full Commission. However, because Commissioners Magwood, Svinicki, and Ostendorff did not agree even to allow the NRC staff to recommend a prompt up-or-down vote on the very first recommendation of the Task Force - to replace the current patchwork of safety regulations with a logical, systematic, and coherent regulatory framework - the NRC staff was directed to consider this recommendation separately from the others, and only within 18 months.

On September 9, the NRC staff submitted this new staff review of the Near-Term Task Force report⁷³, stating that "the NRC staff believes that all the [task force's] overarching recommendations, if implemented, would enhance safety and the staff agrees with moving forward with each of these recommendations." It also recommended the near-term implementation of a number of the Task Force recommendations.

It took the Commission until October 18 to reach a majority vote on how to proceed.⁷⁴ A majority of the Commission demanded⁷⁵ that the proposal for how nuclear power plants cope

⁶⁸ July 17, 2011 email from Belkys Sosa to Commissioner Apostolakis

⁶⁹ <http://www.nrc.gov/reading-rm/doc-collections/commission/cvr/2011/2011-0093vtr-gbj.pdf>

⁷⁰ See attachment 1 <http://markey.house.gov/docs/07-21-11ejmtomagwoodsvinicki.pdf>

⁷¹ <http://www.nrc.gov/reading-rm/doc-collections/commission/cvr/2011/2011-0093vtr-wdm.pdf> and <http://www.nrc.gov/reading-rm/doc-collections/commission/cvr/2011/2011-0093vtr-cls.pdf>

⁷² <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2011/2011-0093srm.pdf>

⁷³ <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2011/2011-0124sey.pdf>

⁷⁴ <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2011/2011-0124srm.pdf>

with a prolonged blackout be in the form of an advanced notice of proposed rulemaking rather than a proposed rule, thereby adding unnecessary delay of up to two years to the implementation of this fundamental safety measure. The majority also required the NRC staff to again justify and re-state its views that existing reactors must undergo retrofits to incorporate these safety upgrades in order to operate safely, a concern raised by Commissioners Svinicki and Ostendorff.

The Commission is currently considering its votes on the next set of Fukushima Task Force recommendations (the 45-day report). On November 7 2011, Commissioner Magwood's chief of staff emailed the Commissioner recommending that he add an item to his as-yet unpublished vote. The item is also reportedly included in Commissioner Ostendorff's unpublished vote, and would disapprove the NRC staff's recommendation to require the safety upgrades to be implemented as retrofits to existing reactors in order to ensure the "adequate protection" of these facilities. If such an item was approved, it could mean that these safety upgrades might not have to be undertaken at all.⁷⁶

⁷⁵ <http://www.nrc.gov/reading-rm/doc-collections/commission/cvr/2011/2011-0124vtr.pdf>

⁷⁶ November 7, 2011 2:11 PM email from Patrice Bubar to Commissioner Magwood

A review of emails and other documents indicates high levels of suspicion and hostility directed at the Chairman

There were other instances in which the other NRC Commissioners assumed ill intent on the part of the Chairman and/or attempted to undermine his efforts or refuse his requests. A sampling of these follows:

- On April 1, 2011, Commissioner Svinicki's staff complained to Commissioner Svinicki that a report he had requested be transmitted to Commission staff upon its completion the night before had not been transmitted until the next morning.⁷⁷
- Early on in the emergency, Chairman Jaczko asked that Commissioners and their staffs stop going to the emergency operations center, because NRC staff who were charged with responding to the emergency instead found themselves spending too much time responding to Commission requests. Commissioners' staffs complained amongst themselves about this, stating "and now that we supposedly can't go to the Ops center we have to listen to spin control,"⁷⁸ "I'm skeptical about [Chairman Jaczko's] rationale,"⁷⁹ that the decision is "a real outrage."⁸⁰
- After Rep. Markey sent an April 15, 2011 letter⁸¹ to the NRC regarding secrecy associated with the post-Fukushima inspections at U.S. nuclear power plants that was based on information he obtained from a whistleblower, Commissioner Magwood's chief of staff speculated to Commissioner Magwood that the letter was "most likely" the result of a briefing Rep. Markey's staff had received from the NRC emergency operations center and complained that the Chairman's office had not yet provided her with a copy of the briefing materials.⁸²
- After receiving a draft of a May speech prepared for delivery by Chairman Jaczko, Commissioner Svinicki's chief of staff asked NRC's Marty Virgilio, a senior NRC official who was also a member of the NRC Near-Term Task Force, whether he agreed with some of its contents, and Mr. Virgilio provided some areas where he might have used "different language."⁸³

⁷⁷ April 1, 2011 12:47 PM email from Patrick Castleman to Kristine Svinicki

⁷⁸ March 17, 2011 8:45 PM email from Mike Franovich to Patrick Castleman and William Orders

⁷⁹ March 17, 2011 7:24 PM email from Patrick Castleman to Kristine Svinicki

⁸⁰ March 17, 2011 8:39 PM email from Patrick Castleman to William Orders

⁸¹ <http://markey.house.gov/docs/4.15.11.nrc.pdf>

⁸² April 15, 2011 3:32 PM email from Patrice Bubar to Commissioner Magwood

⁸³ May 21, 2011 1:39 PM email from Jeffrey Sharkey to Marty Virgilio and 1:45 PM response

- On July 23, 2011, Commissioner Magwood noted⁸⁴ to his staff that it would be “nice” if someone countered a letter from California Senator Barbara Boxer that was related to the NRC Near-Term Task Force report.
- On August 4, after being told at a briefing that Chairman Jaczko’s mother had been hospitalized due to breast cancer and reiterating a request that the Commission approve the Chairman’s request to delay the submission of one of his votes while he was on personal leave, Commissioner Magwood decided he would continue to object to the request.⁸⁵
- On August 19, after Chairman Jaczko submitted the vote discussed above, Commissioner Magwood’s chief of staff emailed him saying that the Chairman had “finally” voted and “we’ll see what is next on how [the Chairman] expresses his dissatisfaction with the Commission.”⁸⁶ In response, Commissioner Magwood said “I can’t wait... probably time to start anticipating the next battle.”⁸⁷
- In a September 22, 2011 7:36 AM email, Commissioner Magwood’s chief of staff informs him that Senator Inhofe’s staff was “quite disappointed” in Chairman Jaczko’s September 14, 2011 letter to Senator Jeff Sessions that detailed the NRC’s response to Fukushima and the manner in which the Commissioners were kept informed, and suggests that perhaps Commissioner Magwood “should counter the letter noting that you did not feel adequately and currently informed about the actions the staff and the Chairman were taking and you never received an explanation as to why the Chairman was invoking emergency powers.”
- On October 20, 2011, in preparation for an all-hands NRC meeting, draft questions and answers contained in materials for Commissioner Ostendorff announced that he, along with the other three Commissioners, had sent Chairman Jaczko formal communications discussing their concerns with the Chairman’s “intimidation of the staff.”

⁸⁴ July 23, 2011 1:38 PM email from Bill Magwood to Patrice Bubar

⁸⁵ August 4 2011 11:16 AM email from Margaret Bupp to Patrice Bubar

⁸⁶ August 19, 2011 6:17 AM email from Patrice Bubar to Commissioner Magwood

⁸⁷ August 19, 2011 6:22 AM email from Bill Magwood to Patrice Bubar

The consideration of the Fukushima safety upgrades is not the only safety-related issue that the other NRC Commissioners have opposed

The Commissioners currently serving at the NRC regrettably have a history of voting against the safety recommendations put forward by technical experts, including its own advisory committees. Some of these votes have occurred since the March 11 earthquake and tsunami. What follows is a summary of these votes:

April 15, 2009: The Commission voted 4-1⁸⁸ (Chairman Jaczko disapproved, Commissioner Svinicki approved, and the other Commissioners who voted have since left the NRC) to support a proposal to enhance the security associated with cesium chloride sources rather than to phase out the most dispersible form of the material altogether as recommended by the National Academies of Science in 2008. Cesium chloride is so dangerous that after scavengers found a small amount in Brazil in 1987 and children and others spread it on their bodies, 250 people were contaminated, 20 became ill with symptoms of radiation poisoning and 4 died.

June 30, 2009: The Commission voted 2-2⁸⁹ (Chairman Jaczko approved, Commissioner Svinicki disapproved, and the other Commissioners who voted have since left the NRC)) to defeat a staff proposal to expand the National Source Tracking System to include Category 3 radioactive sources, which the International Atomic Energy Agency says, if not safely managed or securely protected, could cause permanent injury to a person who handled them, or were otherwise in contact with them, for some hours.

June 1, 2010: The Commission voted 4-1⁹⁰ (with only Chairman Jaczko voting to disapprove) in support of a proposal to reduce the limitation on the number of work hours for employees who perform quality control and quality verification functions at nuclear power plants.

September 7, 2010: The Commission voted 4-1⁹¹ (with only Chairman Jaczko voting to disapprove) to support a proposal to stop having separate votes on all requests to be exempted from the requirement that 'near-site emergency operations facilities' be located near to the site of where the actual nuclear reactor emergencies or accidents might occur. Licensees have instead proposed the creation of 'centralized emergency operations facilities' that are hundreds of miles away from the nuclear reactors located in multiple States they are intended to serve.

December 2, 2010: The Commission voted 4-1⁹² (with only Chairman Jaczko voting to approve) to disapprove a proposal to require specific NRC licenses for radioactive materials that could be

⁸⁸ SECY 08-0184

⁸⁹ SECY 09-0086

⁹⁰ SECY-09-0183

⁹¹ SECY 10-0078

⁹² SECY-10-0105

used to make a dirty bomb whose activity level is greater than 1/10th of “Category 3,” even though a previous Commission had supported such a proposal. Requiring a license would have alleviated some concerns related to the potential for a terrorist to aggregate these smaller sources to create a larger improvised dirty bomb.

March 15, 2011: The Commission voted 4-1⁹³ (with only Chairman Jaczko voting to disapprove) to approve a staff proposal to ignore a recommendation by NRC’s Advisory Committee on Reactor Safeguards to ensure that safety measures that are assumed to address the hotter reactor cores and higher pressures associated with ‘power up-rates’ (which enable nuclear reactors to produce more electricity) would work to prevent a melt-down in the event of an accident. The Advisory Committee believed that the possibility that a fire or earthquake could breach the containment of the nuclear reactor needed to be considered.

March 30, 2011: The Commission voted 4-1⁹⁴ (with only Chairman Jaczko voting to approve) to disapprove a staff proposal to add requirements for personnel seeking access to nuclear reactor construction sites to ensure that appropriate security screening was conducted. The Commission instead decided to rely on a voluntary Nuclear Energy Institute personnel security initiative.

November 8, 2011: The Commission voted 3-2 (with Chairman Jaczko and Commissioner Ostendorff voting to approve) to disapprove a staff proposal that the Commission adopt an amendment to its Reactor Oversight Process,⁹⁵ described as “a means to collect information about licensee performance, assess the information for its safety significance, and provide for appropriate licensee and NRC response,” to add a new performance measure related to leaks of radioactive materials from nuclear reactors.

⁹³ SECY 11-0014

⁹⁴ SECY-10-013

⁹⁵ <http://www.nrc.gov/reactors/operating/oversight/rop-description.html>

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Attachment 1

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Angela Coggins

From: Jaczko, Gregory
Sent: Friday, March 11, 2011 8:13 AM
To: Monninger, John; Batkin, Joshua
Cc: Loyd, Susan; Coggins, Angela
Subject: Re: Tsunami

Thanks

----- Original Message -----

From: Monninger, John
To: Batkin, Joshua; Jaczko, Gregory
Cc: Loyd, Susan; Coggins, Angela
Sent: Fri Mar 11 07:21:34 2011
Subject: RE: Tsunami

There is a 8:00 call with EDO and Region IV that I'm going to sit in on.

Diablo Canyon issued a NOUE due to potential for Tsunamis.

I'll fill you in following the 8:00 call.

-----Original Message-----

From: Batkin, Joshua
Sent: Friday, March 11, 2011 7:20 AM
To: Jaczko, Gregory
Cc: Monninger, John; Loyd, Susan; Coggins, Angela
Subject: Tsunami

Chairman - record earthquake in Japan with tsunamis overnight. Tsunami warning for HI and West coast this morning. Can we get you an AM briefing about preparations for any materials/plants that may be in the US warning zone?

Joshua C. Batkin
Chief of Staff
Chairman Gregory B. Jaczko



Monninger, John

From: Monninger, John
Sent: Friday, March 11, 2011 9:37 AM
To: Nieh, Ho
Subject: FW: Tsunami

Ho,

See below. I was a little too quick on my email addressed.

Sorry about that.

John M.

From: Monninger, John
Sent: Friday, March 11, 2011 9:34 AM
To: Sharkey, Jeffrey; Sosa, Belkys; Bubar, Patrice; Dhir, Neha
Cc: Batkin, Joshua; Hipschman, Thomas; Marshall, Michael
Subject: Tsunami

NRC HQ and Region IV are monitoring the potential impact of tsunamis impacting NRC licensees and licensed materials.

Diablo Canyon issued a NOUE due to the Tsunami WARNING. Expected wave is predicted to be well within the Design Basis. Licensees evaluating the potential for loss of circulating water pumps and need for potential shutdown due to sea level draw down in advance of wave. No decision on shutdown at this time. Humboldt Bay ISFSI is also monitoring the event and wave heights are predicted to be within the design basis.

San Onofre is in the Tsunami ADVISORY area so they are monitoring the event. Wave heights are predicted to be well within the design basis.

Staff does not expect any impact to material licensees, including Hawaii, Alaska, Guam, and the Marianas Islands.

Staff from the Japanese regulator (NISA) were attending the RIC and are still in the US. NRC offered them access to the HQ Operations Center to facilitate communications with their government and other entities back home.

OIP has checked and is not aware of any NRC staff in Japan.

Monninger, John

From: HOO Hoc
Sent: Friday, March 11, 2011 10:09 AM
To: HOO Hoc
Subject: HOO HIGHLIGHT - NRC IN MONITORING MODE AT 0946

The NRC is in the Monitoring Response Mode as of 0946 on 3/11/11. Region IV will take the lead for U.S. sites and HQ for international sites to provide assistance in response to the earthquake in Japan and any adverse affects from a tsunami. This response mode change is NOT associated with event number 46668.

Joe O'Hara
Headquarters Operations Officer
U.S. Nuclear Regulatory Commission



Monninger, John

From: ANS.HOC@nrc.gov
Sent: Friday, March 11, 2011 12:54 PM
Subject: ACTION: Commissioner's Assistant Briefing Notification

There will be a Commissioner's Assistant Briefing given by Region4/HQ at 1300 concerning the event Tsunami from Japan. Call [REDACTED] approximately 5 minutes before the scheduled start time. When prompted, enter security code [REDACTED]. You may call [REDACTED] at this time and follow the voice prompts if you do not wish to receive this notification from our Automatic Notification System.

Angela Coggins

From: Batkin, Joshua
Sent: Friday, March 11, 2011 1:04 PM
To: Monninger, John; Hipschman, Thomas; Loyd, Susan; Coggins, Angela
Subject: Fw: ACTION: Commissioner's Assistant Briefing Notification

Tom, are you jumping on?

Joshua C. Batkin
Chief of Staff
Chairman Gregory B. Jaczko
(301) 415-1820

From: ANS.HOC@nrc.gov <ANS.HOC@nrc.gov>
Sent: Fri Mar 11 12:53:34 2011
Subject: ACTION: Commissioner's Assistant Briefing Notification

There will be a Commissioner's Assistant Briefing given by Region4/HQ at 1300 concerning the event Tsunami from Japan. Call [REDACTED] approximately 5 minutes before the scheduled start time. When prompted, enter security code [REDACTED]. You may call [REDACTED] at this time and follow the voice prompts if you do not wish to receive this notification from our Automatic Notification System.

Monninger, John

From: ANS.HOC@nrc.gov
Sent: Friday, March 11, 2011 7:24 PM
Subject: ACTION: Commissioner's Assistant Briefing Notification

There will be a Commissioner's Assistant Briefing given by Headquarters at 2315 EST concerning the Japan Tsunami event. Call [REDACTED] approximately 5 minutes before the scheduled start time. When prompted, enter security code [REDACTED]. You may call [REDACTED] at this time and follow the voice prompts if you do not wish to receive this notification from our Automatic Notification System.

Batkin, Joshua

From: Jaczko, Gregory
Sent: Friday, March 11, 2011 7:43 PM
To: Ostendorff, William; Apostolakis, George; Magwood, William; Svinicki, Kristine
Subject: japan reactors

Hi all – We are continuing to monitor the situation with regard to reactors in japan. At this point, information is extremely spotty and unreliable. I have reinforced with the staff monitoring the situation the importance of only providing reliable information and the importance of not speculating. I have also emphasized with them that Japan has the responsibility for dealing with this tragic situation. I recognize that there may be press accounts that have information different from what we are providing, but please bear with us as we work to confirm information. We will keep you updated as best as possible, but please recognize that there will be limited confirmed information because that is all we – or anyone else – is able to obtain at this point. If you or you staff do obtain any information, please forward it to the HOO so that we have a central clearing house for all the information.

Thanks,
Greg

Monninger, John

From: ANS.HOC@nrc.gov
Sent: Saturday, March 12, 2011 6:55 AM
Subject: ACTION: Commissioner's Assistant Briefing Notification

There will be a Commissioner's Assistant Briefing given by HO Monitoring Team at 0730 am on Saturday March 12 concerning the Japanese Reactor Event. Call [REDACTED] approximately 5 minutes before the scheduled start time. When prompted, enter security code [REDACTED]. You may call [REDACTED] at this time and follow the voice prompts if you do not wish to receive this notification from our Automatic Notification System.

Monninger, John

From: ANS.HOC@nrc.gov
Sent: Saturday, March 12, 2011 8:41 PM
Subject: ACTION: Commisssioner's Assistant Briefing Notification

There will be a Commissioner's Assistant Briefing given by Headquarters at 2330 EST concerning the Japan Nuclear Plants. Call [REDACTED] approximately 5 minutes before the scheduled start time. When prompted, enter security code [REDACTED]. You may call [REDACTED] at this time and follow the voice prompts if you do not wish to receive this notification from our Automatic Notification System.

Monninger, John

From: ANS.HOC@nrc.gov
Sent: Sunday, March 13, 2011 7:00 AM
Subject: ACTION: Commissioner's Assistant Briefing Notification

There will be a Commissioner's Assistant Briefing given by NRC Headquarters Management at 0730 Eastern this morning [Sunday March 13] concerning the ongoing Japanese Reactor Event. Call [REDACTED] approximately 5 minutes before the scheduled start time. When prompted, enter security code [REDACTED]. You may call [REDACTED] at this time and follow the voice prompts if you do not wish to receive this notification from our Automatic Notification System.

Monninger, John

From: ANS.HOC@nrc.gov
Sent: Sunday, March 13, 2011 2:07 PM
Subject: ACTION: Commissioner's Assistant Briefing Notification

This is the Headquarters Operations Officer. There will be a Commissioner's Assistant Briefing given by headquarters at 15:30 Eastern Daylight Time concerning the Japanese reactor event. Call [REDACTED] approximately 5 minutes before the scheduled start time. When prompted, enter the security code [REDACTED] followed by the pound sign.

Angela Coggins

From: Coggins, Angela
Sent: Tuesday, March 15, 2011 5:57 PM
To: Sharkey, Jeffrey; Sosa, Belkys; Bubar, Patrice; Nieh, Ho
Cc: Batkin, Joshua; Bradford, Anna
Subject: Prep Material for
Attachments: Talking Points for Chairman 1030 am 3-15-11.doc

Hi everyone! In addition to the Q&As that I believe you already received from OPA, this is a one-pager that staff has been updating for the Chairman's use and that Mr. Borchardt used as prep for today's bill briefing. I believe it is just a summary of the more detailed status reports you receive, but in case you find it useful, I thought I would provide. Thanks!

Angela B. Coggins
Policy Director
Office of Chairman Gregory B. Jaczko
U.S. Nuclear Regulatory Commission


Angela Coggins

From: Jaczko, Gregory
Sent: Friday, March 18, 2011 1:10 PM
To: Vietti-Cook, Annette; Svinicki, Kristine; Apostolakis, George; Magwood, William; Ostendorff, William
Cc: Sharkey, Jeffrey; Lepre, Janet; Sosa, Belkys; Blake, Kathleen; Bubar, Patrice; Crawford, Carrie; Nieh, Ho; Zorn, Jason; Coggins, Angela; Batkin, Joshua; Burns, Stephen; Rothschild, Trip; Bates, Andrew; Baval, Rochelle; Laufer, Richard; Borchardt, Bill; Pace, Patti; 3WFN Core Team List Resource
Subject: RE: Monday's Commission Briefing on NRC Response to Recent Nuclear Events in Japan

I asked Annette to delete the second bullet because I did not want to get out ahead of the doe efforts to deal with bullet number 2. The staff is still prepared to deal with the issue per the scheduling note approved by the commission, but we likely won't have much to say until doe completes a few analyses in that regard. I suspect that should get done by Monday. I simply did not want to create a stream of press based on the scheduling note. We've supplied source term information, doe is doing the modeling and dose projections per usual authorities.

From: Vietti-Cook, Annette
Sent: Friday, March 18, 2011 1:04 PM
To: Svinicki, Kristine; Apostolakis, George; Magwood, William; Ostendorff, William; Jaczko, Gregory
Cc: Sharkey, Jeffrey; Lepre, Janet; Sosa, Belkys; Blake, Kathleen; Bubar, Patrice; Crawford, Carrie; Nieh, Ho; Zorn, Jason; Coggins, Angela; Batkin, Joshua; Burns, Stephen; Rothschild, Trip; Bates, Andrew; Baval, Rochelle; Laufer, Richard; Borchardt, Bill; Pace, Patti; 3WFN Core Team List Resource
Subject: Monday's Commission Briefing on NRC Response to Recent Nuclear Events in Japan

The Chairman requested that I delete the second bullet of the draft scheduling note I sent you earlier, and is following up with you. Attached is the final scheduling note that is being posted to the web. We are delivering background books today, and maybe slides. If slides are not available today, they will be sent around by email this weekend.

SECY has coordinated with the rest of the agency on logistics but just want you to be aware the meeting will be broadcast to TWFN auditorium to handle overflow in Commission Hearing Room, lots of security will be on hand, and CBS Broadcast Network pool camera will be in the room and will feed others, but lots of reporters and photographers are expected (OPA is working this), space is being reserved in the hearing room for NRC staff that may need to answer questions, and press.

I need to leave a little early this afternoon (picking up son from college - spring break...). Andy Bates is Acting for me this afternoon [REDACTED] Richard Laufer is working details of Monday's Commission meeting [REDACTED]

I am available by cell phone, from the time I leave and over the weekend. I will of course be here bright and early Monday.
 Annette [REDACTED]

If you have any trouble reaching me, please contact the following people in this order for assistance:

Andrew Bates [REDACTED]

Rochelle Baval [REDACTED]

Rich Laufer [REDACTED]

Ken Hart, although a SECY MVP, is not listed because he is working shift work at the ops center.

Angela Coggins

From: Coggins, Angela
Sent: Friday, March 18, 2011 5:33 PM
To: Sharkey, Jeffrey; Sosa, Belkys; Bubar, Patrice; Nieh, Ho
Cc: Vietti-Cook, Annette; Laufer, Richard; Bovol, Rochelle
Subject: Monday's agenda planning

Hi everyone! SECY has done a great job putting together a packet as background for the agenda planning session on Monday. You should probably have it by now (SECY is walking it around). The Chairman will be working this weekend on providing a proposed plan for discussion at the meeting and we're hoping to share that by early evening Sunday. In the meantime though, we thought it might be helpful for everyone to have a packet that shows what was currently planned for the Commission during the next few months so that your bosses would have this as background as they think about what might need to be adjusted. We'll get you additional info as soon as we have it and please call if you have any questions. Thanks!!

Angela B. Coggins
Policy Director
Office of Chairman Gregory B. Jaczko
U.S. Nuclear Regulatory Commission


Angela Coggins

From: Jaczko, Gregory
Sent: Sunday, March 20, 2011 7:44 PM
To: Apostolakis, George; Magwood, William; Svinicki, Kristine; Ostendorff, William
Subject: Fw: draft COM and Items for Agenda Planning
Attachments: Tasking Following Japan Earthquake.docx; Proposed New Meeting Schedule.doc; spreadsheet recommended paper changes.doc

Hi all - please see below.

From: Greg Jaczko <[REDACTED]>
To: Jaczko, Gregory
Sent: Sun Mar 20 19:42:07 2011
Subject: draft COM and Items for Agenda Planning

Attached are 3 items I hope will facilitate our discussion at tomorrow's agenda planning meeting and open meeting. First, you'll find a draft COM, that I would like to issue tomorrow, which lays out a plan for us to task the staff to address the events in Japan with both near and long term actions. Next, is a meeting list which lays out by week a proposed new calendar for the next 3 months and identifies where I've recommended some additional meetings or recommended moving around some of our existing meetings. The final item is a spreadsheet of the voting items that were on our priority list through June with some recommendations for modification to the prioritization of some of those items.

I would appreciate any thoughts you have on the draft com tonight. If there are simple tweaks that could facilitate more timely decision, let me know. The COM is basically what I emailed y'all yesterday incorporating some feedback I've received. I then tried to make it a more readable is all.

Angela Coggins

From: Jaczko, Gregory
Sent: Sunday, March 20, 2011 8:57 PM
To: Coggins, Angela; Batkin, Joshua; Pace, Patti
Subject: FW: draft COM and Items for Agenda Planning

From: Magwood, William
Sent: Sunday, March 20, 2011 8:57:21 PM
To: Jaczko, Gregory; Apostolakis, George; Svinicki, Kristine; Ostendorff, William
Subject: Re: draft COM and Items for Agenda Planning
Auto forwarded by a Rule

Greg,

Thanks. As you indicate, your draft reflects recent exchanges. We should be able to come to closure in a timely fashion.

The only significant comment I would make at this stage is that I encourage that the longer-term effort begin at a defined time subsequent to completion of the proposed near-term review. I recognize that not all the facts will be in from the aftermath of the Fukushima event, but it could take months if not longer to develop a full understanding of what happened. An indefinite start-point has technical merit but practical challenges. I'm also uncertain how we should best consider any specific conclusions about Mark I BWRs in a framework that should perhaps focus on the broader issues you've highlighted.

Moreover, the events of the last week have already raised significant questions with which the agency must grapple. I don't see much to be gained by delaying the inevitable effort to look at issues such as SBO.

One other thought, which I don't think should be part of a "Japan Response" task force, is that we will need to deal with questions being raised about specific plants. They aren't going to go away.

Thanks,
 Bill

From: Jaczko, Gregory
To: Apostolakis, George; Magwood, William; Svinicki, Kristine; Ostendorff, William
Sent: Sun Mar 20 19:44:26 2011
Subject: Fw: draft COM and Items for Agenda Planning

Hi all - please see below.

From: Greg Jaczko [REDACTED]
To: Jaczko, Gregory
Sent: Sun Mar 20 19:42:07 2011
Subject: draft COM and Items for Agenda Planning

Attached are 3 items I hope will facilitate our discussion at tomorrow's agenda planning meeting and open meeting. First, you'll find a draft COM, that I would like to issue tomorrow, which lays out a plan for us to task the staff to address the events in Japan with both near and long term actions. Next, is a meeting list which lays out by week a proposed new calendar for the next 3 months and identifies where I've recommended some additional meetings or recommended moving around some of our existing

Angela Coggins

From: Jaczko, Gregory
Sent: Tuesday, March 22, 2011 4:41 PM
To: Apostolakis, George; Svinicki, Kristine; Ostendorff, William; Magwood, William
Subject: japan com

Hi all

Two issue I wanted to bring to your attention.

1. I have concerns with current majority position to only release publicly the task force reports after the commission approves them. If there is anything I can do to help you understand my reservations about this please call me.
2. I think the agency is missing an opportunity to show that we can act in a timely manner on a matter of importance by completing the com. if there is anything I can do to help us come to a conclusion on the com, please call me about that too.

Thanks,
Greg

Angela Coggins

From: Nleh, Ho
Sent: Friday, March 25, 2011 12:24 PM
To: Batkin, Joshua; Sosa, Belkys; Sharkey, Jeffrey; Bubar, Patrice
Cc: Coggins, Angela; Pace, Patti; Vietti-Cook, Annette; Burns, Stephen; Rothschild, Trip
Subject: RE: Daily discussions

Dear all,

Commissioner Ostendorff continues to believe that it is important that Commissioner staff be able to engage on current agency status and activities. Daily Chief of Staff meetings and routine reactors/materials/legal assistants meetings are effective mechanisms to exchange information that is useful to the activities of the Commission. Commissioner Ostendorff supports the continuation of these Commissioner staff meetings.

Furthermore, Commissioner Ostendorff continues to support opportunities, where appropriate, to meet with the entire Commission. While daily meetings to discuss current agency status and activities can and should continue to be conducted by the Chiefs of Staff, Commissioner Ostendorff would consider a meeting with his colleagues to discuss in general the ways in which the Commissioner offices routinely communicate.

Thanks,

Ho

Ho Nleh
 Chief of Staff
 Office of Commissioner William C. Ostendorff
 U.S. Nuclear Regulatory Commission



From: Batkin, Joshua
Sent: Thursday, March 24, 2011 3:24 PM
To: Sosa, Belkys; Sharkey, Jeffrey; Bubar, Patrice; Nleh, Ho
Cc: Coggins, Angela; Pace, Patti; Vietti-Cook, Annette; Burns, Stephen; Rothschild, Trip
Subject: Daily discussions

The daily non-sunshine act discussions among the Commissioners about the events in Japan seemed to work well, so we're going to try a modified way of keeping your principals up-to-date on the day's news: The Chairman would like to have a daily discussion with his colleagues at 9:00am for him to provide information about current agency status and activities. Annette, can you please help us set up such a non-sunshine act discussion as a routine part of the day (Mondays through Thursdays) beginning this Monday morning at 9am? OGC and SECY please join. Let's do it as a phone call, since that should make it easier for the Commissioners to be able to get together on a regular basis.

This daily call will obviate the need for the CoS's to get together each day at 10:30am. If there are actual policy discussions we can engage in at the staff level, we should definitely meet on an ad hoc basis.

Thank you,
 Josh

Angela Coggins

From: Batkin, Joshua
Sent: Tuesday, March 29, 2011 7:11 PM
To: Nieh, Ho; Sosa, Belkys; Bubar, Patrice, Sharkey, Jeffrey
Cc: Vietti-Cook, Annette; Rothschild, Trip; Coggins, Angela; Gibbs, Catina
Subject: Tomorrow's 9am Non-Sunshine Act Discussion

Consistent with my emails over the weekend, the Chairman looks forward to updating his colleague on agency status and activities, and his Japan trip, tomorrow at 9am. He will be leaving an 8am WH meeting early so that he can talk to them and then will head to the Hill to testify at 10am, therefore, this one will have to be by phone. Thanks Josh

Angela Coggins

From: Batkin, Joshua
Sent: Wednesday, March 30, 2011 11:36 AM
To: Nieh, Ho; Sosa, Belkys; Baggett, Steven
Cc: Coggins, Angela
Subject: Re: EA MEETING Time

My boss personally briefed yours this morning between a WH meeting and a Senate hearing. Our office will not be able to support a CoS meeting this afternoon or tomorrow morning because of our schedules and I would appreciate you respecting that. Can we please stop the silliness? As I told your boss Ho, I haven't given up on meeting with my colleagues as a group, and we'll find a mutually agreeable time to all get together, but this isn't a productive way to do that. Thanks so much.

Joshua C. Batkin
Chief of Staff
Chairman Gregory B. Jaczko



From: Nieh, Ho
To: Bates, Andrew; Sharkey, Jeffrey; Bubar, Patrice; Sosa, Belkys; Baggett, Steven; Zorn, Jason; Batkin, Joshua; Coggins, Angela
Sent: Wed Mar 30 10:04:58 2011
Subject: RE: EA MEETING Time

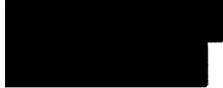
I am also watching the hearing on the web.

Is there a time we can meet this afternoon?

Thanks

Ho

Ho Nieh
Chief of Staff
Office of Commissioner William C. Ostendorff
U.S. Nuclear Regulatory Commission



From: Bates, Andrew
Sent: Wednesday, March 30, 2011 10:04 AM
To: Sharkey, Jeffrey; Bubar, Patrice; Nieh, Ho; Sosa, Belkys; Baggett, Steven; Zorn, Jason
Subject: FW: EA MEETING Time

FYI – As follow up to Monday's meeting-

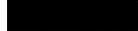
From: Batkin, Joshua
Sent: Wednesday, March 30, 2011 9:19 AM
To: Bates, Andrew
Cc: Coggins, Angela; Rothschild, Trip; Bradford, Anna
Subject: Re: EA MEETING Time

Angela Coggins

From: Batkin, Joshua
Sent: Thursday, March 31, 2011 8:29 PM
To: Bubar, Patrice
Cc: Coggins, Angela; Pace, Patti
Subject: Phone calls

Patty, appreciate your boss calling the Chairman back. It can wait until tomorrow, so let's get them to talk in the afternoon. Thanks Josh

Joshua C. Batkin
Chief of Staff
Chairman Gregory B. Jaczko



Angela Coggins

From: Jaczko, Gregory
Sent: Monday, July 11, 2011 6:20 PM
To: Virgilio, Martin
Cc: Borchardt, Bill; Coggins, Angela; Batkin, Joshua
Subject: RE: The Task Force Report

Thanks. lets chat. Are you still around

From: Virgilio, Martin
Sent: Monday, July 11, 2011 5:51 PM
To: Jaczko, Gregory
Cc: Borchardt, Bill; Coggins, Angela; Batkin, Joshua
Subject: The Task Force Report

Chairman

As we agreed, the SECY forwarding the Task Force Report will have no EDO analyses or recommendations. It provides the results of the team's independent review. In a separate memo we will provide the resource estimates developed by the Task Force. We have also developed a cover memo for you to use in providing the report to the White House. The purpose of this note is to offer my initial thoughts on the Report, which we will provide to you as early as possible tomorrow.

First, I believe that the line organization should review the report and provide recommendations to you and the Commission on how to move forward. I would have the Steering Committee for the long-term review lead that effort, and involve NRC technical experts and a panel of external stakeholders. I believe the ACRS should weigh in on the report as well.

Second, I believe that orders would not be the best approach for the 11 recommended areas. I believe seismic and flood protection walk downs, ERDS modernization, and new tech specs requiring operability of existing equipment could be accomplished by Order. However, other recommendations such as containment vents, new instrumentation, new power supplies, and multi unit EP would, in my view, best be accomplished by rule making with internal and external stakeholder involvement in developing the detailed success measures.

Finally, we need to align with you and the Commission on what work we proposed to place on hold while we follow-up on the Task Force report. As the team has stated, there is no imminent risk from continued operation and licensing activities. In that light, we need thoughtful choices around what work we will defer.

Marty

DARRELL E. ISSA, CALIFORNIA
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LAWRENCE J. BRADY
STAFF DIRECTOR

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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 13, 2011

The Honorable Gregory Jaczko
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Chairman Jaczko:

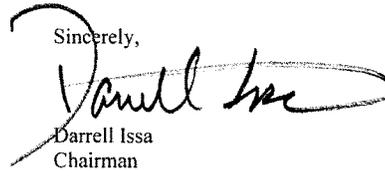
Thank you for appearing before the Committee on Oversight and Government Reform on December 14, 2011, at the hearing entitled "The Leadership of the Nuclear Regulatory Commission." We appreciate the time and effort you gave as a witness before the Committee.

Pursuant to the direction of the Chairman, the hearing record remains open to permit Members to submit additional questions to the witnesses. In preparing your answers to these questions, please address your response to the Member who has submitted the question(s) and include the text of the Member(s) question along with your response.

Please provide your response to these questions by January 27, 2011. Your response should be addressed to the Committee office at 2157 Rayburn House Office Building, Washington, DC 20515. Please also send an electronic version of your response by e-mail to Nadia Zahran, Staff Assistant, at Nadia.Zahran@mail.house.gov in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Nadia Zahran at (202) 225-5074.

Sincerely,



Darrell Issa
Chairman

Attachment

cc: The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

Chairman Jaczko
Page 2

Questions for Chairman Jaczko
U.S. Nuclear Regulatory Commission

Chairman Darrell Issa
Committee on Oversight and Government Reform

Hearing on "The Leadership of the Nuclear Regulatory Commission"

1. What was your reaction to your colleagues' October 13, 2011 letters to you and the White House?
 - a. After receiving the letters, and prior to your December 7, 2011 letter to the White House, how did you address or respond to the concerns raised by your colleagues? Please describe any specific examples.
 - b. Prior to your December 7, 2011 letter, did you contact your colleagues to better understand and discuss their concerns?
2. In your December 7, 2011 letter to the White House you stated "As the Chairman of our collegial body, I take responsibility for improving the level of our dialogue. I will continue to reach out to my Commission colleagues in an effort to improve our communication and I will continue to keep them fully informed."
 - a. Following your December 7, 2011 letter to the White House, what specific steps have you taken to respond to the concerns raised by your colleagues?
 - b. Have you discussed specific actions or ways to improve collegiality with your fellow Commissioners? If yes, please explain when these conversations took place and the nature of the discussion. If no, please explain why not and how you intend to improve collegiality with your fellow Commissioners.
 - c. Are there additional actions you believe are necessary to address the concerns raised by your colleagues? Please identify such actions, including a time frame for taking them.
 - d. What specific actions do you believe are necessary to restore internal and external confidence in the management and operations of the NRC?
3. In your December 7, 2011 letter to the White House, you apologized "for any distraction the disagreements we have had at the Commission, and which would have been better addressed through internal dialogue, may have caused you."
 - a. Have you apologized to either your colleagues or NRC staff? If yes, please detail the date of, reason for, and nature of the apology.

Chairman Jaczko
Page 3

4. In your December 7, 2011 letter to the White House you noted that “all too often, when faced with tough policy calls, a majority of this current Commission has taken an approach that is not as protective of public health and safety as I believe is necessary.”
 - a. Do you believe that other members of the Commission place other concerns or issues ahead of public health and safety? Please explain your response and provide specific examples.
5. What prompted you to seek your colleagues’ support for the removal of Executive Director of Operations Bill Borchardt?
 - a. Did any specific incident or action give rise to this decision?
 - b. Based on your understanding, why did your colleagues ultimately not support the removal of Mr. Borchardt?
 - c. Do you continue to believe that Mr. Borchardt should be removed as Executive Director for Operations? Please explain why or why not.
6. Did you submit a response to the Office of the Inspector General on what, if any, actions you intended to take following its June 6, 2011 report (OIG Case No. 11-05)? If yes, please provide your response. If no, please explain why you did not believe a response was necessary.
7. In your December 7, 2011 letter to the White House, you suggested that your colleagues concerns are not rooted in policy differences but arise “from the lack of understanding the current Commissioners have of their statutory roles at the agency.” You also observed that “this is not the first time that confusion over differences between the roles and responsibilities of the NRC Chairman and Commissioners has caused communication problems[,]” citing a 1999 report by the Office of the Inspector General.
 - a. What steps are necessary to avoid future disagreements over roles and responsibilities?
 - b. Do you believe there are legislative changes necessary to avoid future disagreements over roles and responsibilities?
8. Prior to March 29, 2011, did any of your fellow Commissioners or their staff ask you or your staff about the use of emergency authority during the NRC response to the events in Japan? If yes, please explain any response provided to a Commissioner or their staff.



COMMISSIONER

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

January 31, 2012

The Honorable Darrell Issa
Chairman, Committee on Oversight
and Government Reform
U. S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Chairman Issa:

Attached are responses to the questions you provided after the December 14, 2011 hearing entitled "The Leadership of the Nuclear Regulatory Commission (NRC)." The questions and answers address sensitive information potentially affecting the NRC staff. We have, therefore, designated this transmittal as "Not For Public Disclosure" and request that the information enclosed be handled as such.

Please do not hesitate to contact me at any time should have any questions. My office has also provided an electronic version of the enclosure to your Staff Assistant via e-mail .

We appreciate the Committee's continued interest in the leadership issues facing the NRC.

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Magwood, IV".

William D. Magwood, IV

Enclosure: As stated

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**QUESTIONS FOR COMMISSIONER WILLIAM D. MAGWOOD, IV
U.S. NUCLEAR REGULATORY COMMISSION**

HEARING ON THE LEADERSHIP OF THE NUCLEAR REGULATORY COMMISSION

- 1. On December 12, 2011, the White House responded to the concerns raised in the letter you and your colleagues wrote on October 13, 2011.**

- a. Do you believe the White House provided an adequate response to your concerns?**

As public servants and the stewards of Federal resources, my fellow Commissioners and I felt a strong obligation to bring our concerns regarding the leadership and management of our agency to the White House. As discussed in the October 13 letter, we believed—and continue to believe—that the behavior of the current Chairman is antithetical to the ability of the Commission to function as prescribed by law, highly damaging to the morale of the agency's senior staff, and injurious to the agency as a whole.

Having discharged our responsibility to alert the White House to our concerns, we can only leave it to those officials to consider our report of the situation and take actions they deem appropriate. I am satisfied that we received a fair and complete hearing of our views and that senior White House officials understand our concerns and the motivations that led to our October 13 letter.

With respect to Mr. Daley's response, it is my reading of his letter that the White House continues to monitor the situation and anticipates the results of ongoing inquiries by the NRC Inspector General. I think it's appropriate that the White House would like to obtain this additional input before closing the matter one way or another. To the degree that Mr. Daley's letter represents an interim response pending the forthcoming issuance of the IG report, I find it adequate.

- b. In your view, what steps must be taken to improve the current situation at the NRC?**

Only an epochal shift in the current leadership and management practices will lead to any meaningful improvement. While the Commission spends inordinate time and energy plugging the leaking dike, we have concluded that we can, at best, only forestall or delay the worst ruptures in the conduct of the NRC's work. We have limited ability to force improvement. It is for that

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reason, after a year and a half of effort, we transmitted our October 13 letter to the White House.

2. The Committee understands that Chairman Jaczko sought to remove the Executive Director for Operations (EDO) William Borchardt from his position.

a. Did the Chairman provide a clear explanation for his desire to remove Mr. Borchardt?

In a closed meeting of the Commission held on August 31, the Chairman noted that he was having “communication” issues with the EDO. As any manager can attest – there is always room for improvement in communication in any organization. I therefore supported having the Chairman, during his normal performance review with the EDO, outline in a straight-forward manner his observations and concerns. However, no concern raised by the Chairman justified the replacement of the EDO, especially during as critical a time as our review of the events at the Fukushima Daiichi nuclear plant and the development of a comprehensive regulatory response in the U.S.

b. What was your response to the Chairman’s attempt to remove Mr. Borchardt?

Subsequent to the closed meeting of the Commission to discuss the future of the EDO, I sent a signed memorandum to the Chairman and the other Commissioners stating that I did not support the removal of the incumbent EDO. As I explained, I was concerned that such a step would significantly disrupt the agency, negatively impact staff morale, and send a very negative, deleterious message to external stakeholders. Moreover, as I stated above, the Chairman had raised no concerns related to the EDO’s performance that warranted such a drastic action.

I also noted to the Commissioners that due to actions taken by the Chairman that appeared to weaken the EDO’s authority, the role of the EDO was at question and that this issue would need to be discussed before any change could be considered.

Three other Commissioners noted their agreement with and support of my observations.

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- c. **Do you have any concerns about the Chairman's efforts to remove Mr. Borchart or how he handled the situation with you and your colleagues?**

As noted in the response above – I certainly had concerns and I expressed those concerns in writing.

- d. **To your knowledge, has Mr. Borchart received a negative performance review in his current role?**

Since I have been a Commissioner, Mr. Borchart has only received outstanding ratings.

3. **In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko made comments that reflect his "contempt for the Commission itself and open disdain for the Internal Commission Procedures, a document that embodies governing principles from the NRC's organic legislation."**

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

This portion of the letter was prompted by remarks the Chairman made to the senior managers of the agency at a meeting on October 5, 2011. The Commissioners were not in attendance at the meeting, but many members of the senior NRC staff who were in attendance came to Commission offices to report their concerns about the Chairman's performance. Staff, some of whom characterized the Chairman's comments as "bizarre," told Commission offices that the clear message from his comments was that the staff should essentially ignore the Commission and respond only to the Chairman. "My colleagues are only focused on process, not policy," he was reported to say. "If you want to get things done, work with me because I know how to get things through the Commission."

In the view of the senior staff present and in the view of Commissioners, statements of this nature demonstrated an open lack of respect for the Commission as a governing body.

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4. In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "intimidated and bullied senior career staff to the degree that he has created a high level of fear and anxiety resulting in a chilled work environment."

- a. What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

Throughout the course of this past year, I have had discussions with several senior executives during which they relayed their deep concern and discomfort with regard to the Chairman's behavior toward them.

As I mentioned in my testimony on December 14, 2011, I spoke with three women who have had personal experience with the Chairman's extreme behavior. Each of those women, including those who related multiple incidents relayed in detail their reflections and reactions to their experiences. The women all had a common reflection which was, "I didn't deserve this".

I will not provide the names of these individuals, as they are concerned that they not be viewed as victims. However, I note that I have learned that the Chairman met with many of the same individuals who had related their experiences to me soon after the December hearing. Reportedly, the purpose of these meetings was to discuss their concerns about his behavior.

In my December 14 statement, I also noted my experience when I asked about a technical issue during a meeting with a senior manager. The manager became extremely nervous and began to stammer. Later, I was informed this individual had provided the same information to another commissioner and, as a result, had been called up to see the Chairman. My meeting with him occurred after whatever transpired in the Chairman's office.

From the day-to-day behavior of many members of the staff, Commissioners have kept grim tally of count of individuals who simply don't want to fight with the Chairman's office any longer. Some have expressed concerns about the security of their positions should they be seen as resisting the Chairman while others are worn down and simply do their best to stay out of his way.

I view this as a chilled work environment.

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- b. In discussions with the White House following your October 13, 2011 letter, did you inform them of specific examples of harassment or intimidation? If yes, please explain these examples and any response you received from the White House.**

I consider my discussions with the White House to have been conducted in confidence. I do not, therefore, think it appropriate to discuss the specific details of those interactions. That said, I think it is fair to say that the comments I provided to the Committee were substantially similar to the input I provided to White House staff. I have not received any formal response from the White House other than the December 12, 2011 letter signed by Chief of Staff Daley.

- c. How has Chairman Jaczko's behavior towards the staff chilled or otherwise affected the work environment.**

This is best revealed by the comments made by NRC staff. As was noted in the sworn statements of several NRC employees provided to your committee, the Chairman's management has created an environment where senior staff and managers are unable or unwilling to provide counsel, advice, and recommendations reflecting what they believe to be the appropriate course of action in situations where they might disagree with the Chairman.

I also call your attention to the responses provided to the Committee by the EDO, Bill Borchardt. As Mr. Borchardt stated: "there is a higher degree of apprehension under the current environment that...there could be some reluctance to provide information as timely and as candidly."

Mr. Borchardt also notes in his testimony that he and other senior managers have received a form of "verbal direction" and "verbal counseling" that in his view was not consistent with the NRC values.

- d. How would the NRC respond to allegations of harassment, intimidation, or a chilled work environment at an NRC licensee?**

The NRC's regulatory process seeks to prevent nuclear industry employees from being subjected to harassment, intimidation, retaliation or discrimination for raising potential safety concerns to a licensee or the NRC. An NRC licensee is subject to enforcement action by the NRC for creating an environment of harassment and intimidation, including the revocation or suspension of a license, the imposition of civil penalties, or even criminal sanctions.

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I also note the comments made by the EDO to the Committee regarding the agency's intolerance for this type of conduct from an NRC staff person. Mr. Borchardt states that "this kind of behavior is inconsistent with what we expect from the staff".

5. In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "ordered staff to withhold or modify policy information and recommendations intended for transmission to the Commission."

What specific incident or incidents prompted you to include this language in your letter to the White House?

There are several examples that led to the inclusion of this language. A very notable example relates to the Near Term Task Force Report provided to the Commission regarding potential actions to be taken in the wake of the Fukushima disaster. Staff provided the Commission with an advance copy of a transmittal memo which had been signed by the EDO which provided his usual detailed discussion regarding the senior staff's recommended next steps. This discussion culminated in a recommendation from the senior staff that there may be value in evaluating the entire body of recommendations in a holistic manner.

However, to the Commission's surprise, that advance copy was withdrawn and a new version of the memo was provided. The new version was a two-paragraph memo that simply transmitted the Task Force report without any input from the agency's senior managers. It is my understanding that withdrawal of the advanced copy of the memorandum was undertaken at the direction of the Chairman. In fact, we later learned that the Chairman's staff—and not the EDO—actually wrote the final version of the memo that was transmitted to the Commission.

Moreover, we later discovered that earlier versions of the original memo offered even more perspective from the staff. For example, one of the earlier versions stated the staff intended to provide the Commission with a roadmap of their planned approach for obtaining stakeholder input on the Task Force's recommendations, analyzing stakeholder input and providing the Commission feedback on each of the recommendations, and transitioning from the near-term to longer-term review by July 15, 2011. That earlier version went on to say the staff intends to solicit input in a manner that will ensure broad stakeholder feedback is received and evaluated, but not unnecessarily delay decision making of near-term actions on the Task Force's recommendations. This information would have been extraordinarily valuable to the Commission's consideration of the task from report. Unfortunately, these earlier editions were modified at the direction of the Chairman and this information was excised.

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It is inconsistent with the intent of NRC's governing statute for one member of the Commission – even the Chairman – to modify recommendations and information provided by the NRC staff.

A second example is related to the policy issue associated with fire protection at nuclear power plants. I was told by a member of the senior staff that the agency's approach to receiving applications from industry to risk-inform fire protection programs at nuclear power plants was not going to work and staff was working on a paper to request Commission direction on a revised strategy. I later asked the Chairman what progress the staff had made developing this paper and the Chairman said there was no paper. Several weeks passed and no progress had been made to resolve this critical fire safety issue. In order to clarify the situation, another Commissioner and I requested a briefing from the staff to understand the details of the problem and what the staff thought should be done. Just before the briefing began, the Chairman dispatched a manager to stop the briefing. Evidently, the Chairman had seen a copy of the staff's briefing and didn't want the information presented to us.

We refused to stop the briefing, but the attempt to prevent us from obtaining staff input was very disturbing. Minutes after the failed attempt to stop the briefing, the Chairman announced that staff would provide the Commission with a paper to address the fire protection issue.

6. **In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "interacted with us, his fellow Commissioners, with such intemperance and disrespect that the Commission no longer functions as effectively as it should."**

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

A specific example, with which I believe you are familiar, involved the Chairman's refusal to engage in collegial discussion at an agenda planning meeting. The Chairman was interested in having the Commission approve his "roadmap" for post-Fukushima actions. The Commission did not approve it and the Chairman proceeded to "gavel down" one of his colleagues in mid-sentence as he was beginning to express his questions about the Chairman's approach. All those present, including many members of the NRC staff, were stunned by this behavior. The Chairman then proceeded to go to the National Press Club and announce his roadmap.

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7. In the October 13, 2011 letter to the White House, you and your colleagues stated: "Chairman Jaczko's behavior and management practices have become increasingly problematic and erratic."

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

There were several examples that prompted that information to be provided. The first concerns the Chairman's behavior at a Commission meeting. For context, Commission meetings are set well in advance and generally include a list of external stakeholders making presentations to the Commissioners as well as the NRC staff. The agendas are published, the public is provided notice and a court reporter is lined up. The Chairman presides over all Commission meetings unless he/she designates someone to preside and generally would only do so if out of the office on pressing agency or personal business. During a meeting in the fall, the Chairman presided over the first part of the meeting. During a brief break, the Chairman became aware of a Commissioner's response to the issue regarding the Chairman's attempt to remove the EDO. This response was the third Commissioner's support of the signed memo I noted above (answer 2b) – thus creating majority support for not removing the incumbent EDO. While I did not witness his response, the Chairman failed to return to the Commission meeting. Commissioner Apostolakis presided over the remainder of the meeting in the Chairman's absence.

A second example concerns considerable unnecessary delay associated with the process to issue the scheduling note for the first Commission mandatory hearing regarding a new nuclear plant license application. This note was designed to clarify the subjects and order of presentation that the Commission expected for the hearing and was essential in enabling witnesses to prepare adequately for the event.

The Chairman did not agree with the majority vote of the Commission in how the scheduling note was structured. Rather than release the note to the public and the witnesses called to testify at the hearing, the Secretary of the Commission was ordered not to release it—contrary to the Secretary's obligations under the Commission's operating procedures. The majority-approved scheduling note was first circulated to the Commission on Sept. 2, 2011. The hearing was scheduled for Sept. 27th and 28th. Despite the fact that all four of the Commissioners had approved the note, the Chairman refused to allow the note to be issued or to offer his specific concerns with the note despite repeated requests to do so. On several occasions, he threatened to simply cancel the hearing.

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Finally, after a long delay, he provided comments and a few, very small changes were made to the final note. Due to his handling of the matter, the scheduling note was not released until late on September 20th, unnecessarily impacting the efforts of witnesses to prepare for the hearing.

- 8. On December 12, 2011, the White House sent a letter to Chairman Issa regarding the management issues at the NRC. In the letter, the White House stated that the “present tensions appear to be rooted in the very structure of the NRC and in disagreements over policy matters.”**

Do you agree with the White House’s assessment? Why or why not?

The structure of the law that establishes NRC’s Commission structure clearly invites a degree of honest tension between the Chairman and Commissioners. However, on the whole, the Commission has functioned extraordinarily well in the 30 years since the Reorganization Plan of 1980. This extended period of performance illustrates that the basic structure of the NRC is sound. Moreover, the structure of the Commission is designed to handle disagreements over policy matters. Such disagreements are to be expected in an organization comprised of individuals with sometimes diverse viewpoints. Past Commissions have resolved policy disagreements through consensus building or, if that proved impossible, by implementing the will of the majority of the Commission. Doing so has proven very difficult with the current Commission, in part because of the intimidation of the staff who would normally assure that the Commission is fully informed.

Despite sometimes serious friction and disagreement, all previous Chairmen have operated within a well-established understanding of the law. I believe that the current, quite unprecedented situation demonstrates that the structure of NRC has proven to be vulnerable to the abuses highlighted in our October 13 letter. To the degree that Mr. Daley’s December 12, 2011 letter draws Congressional attention to these vulnerabilities to prompt their eventual remediation, I agree.

Regarding Mr. Daley’s comment regarding “disagreements over policy matters,” I do not agree and do not know what information may have prompted this conclusion.

- 9. In his December 7, 2011 letter to the White House, Chairman Jaczko suggested that your concerns about the Commission’s ability to function effectively are not rooted in policy differences but arise from the lack of understanding that the current Commissioners have of their statutory roles at the agency.”**
- a. Do you agree with the Chairman’s assertion that you and your colleagues lack an understanding of your statutory role at the agency?**

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No. One of my colleagues has served nearly a full term as an NRC Commissioner. Another is an attorney with considerable governmental and legislative experience. A third was a long-serving member of the Advisory Committee on Reactor Safeguards with deep experience operation of the agency. Moreover, I have consulted with former Chairmen of the agency and retired, high-ranking NRC attorneys to discuss our concerns, as well as standing members of the senior staff. I believe that it is quite clear that the current Chairman's interpretations of the statute are without prior precedent. I find it somewhat difficult to believe that all the Chairman and Commissioners who served in this agency over 30 years have misunderstood the statute that guides the Commission and that only the current Chairman has understood the law correctly.

b. How does your interpretation of your role at the agency differ from that of previous Commissioners? Have you sought advice from other current or former Commissioners on your role at the NRC?

My interpretation of my role is very consistent with that of previous Commissioners. I remain in contact with several former Commissioners and Chairmen of the NRC and they have expressed complete disappointment with the serious erosion of the integrity of the Commission process. These discussions have convinced me that my interpretation is consistent with that of past NRC Commissioners.

c. Based on your understanding of previous Commissions, does the current Chairman's interpretation of his role and responsibilities differ significantly from his predecessors?

Yes. I believe that the main difference lies in the Chairman's interpretation of his duty to insure "that the Commission is fully and currently informed about matters within its functions," and, more specifically, his interpretation of what matters are within the Commission's functions. As "principal executive officer of the Commission," and under his authority "for developing policy planning and guidance for consideration by the Commission," he has sought to narrow the scope of information provided to the Commission as well as the Commission's role in decision-making. He has used this authority to change staff-prepared papers before they are provided to the Commission and to prevent or delay the transmission of staff recommendations to the Commission. We believe this is inconsistent with the intent of the law.

The Chairman also believes that his role as "spokesperson" for the agency is absolute and that he need not be constrained in his public comments by the views of the majority. Comments by a majority of Commissioners on press releases, the Chairman's speeches, and other public information are routinely ignored. More often, the Commission learns of pronouncements from the agency by reading it in the press. Again, we believe this approach is without prior precedent.

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- d. **Have the revisions to the Internal Commission Procedures approved by the current Commission resolved disagreements or confusion over roles and responsibilities with Chairman Jaczko? Why or why not?**

The revisions to the ICPs were intended to clarify the respective roles and responsibilities of the Commission and the Chairman. I believe that these revisions, if properly implemented, could alleviate many of the current issues. However, the Chairman's implementation of the procedures is often problematic. For example, under the revised ICPs, the Chairman can manage the flow of information from the staff to the Commission. The intent of these provisions of the ICPs is for the Chairman to serve as a conduit for information consistent with his authority under the Reorganization Plan to develop policy planning and guidance. In reality, he has used his position as an intermediary between the staff and the Commission to revise and restrict the information flow between the Commission and the staff in order to support his personal views on issues.

Another example is in his role as spokesperson for the agency. The ICPs are intended to provide a mechanism for soliciting and incorporating comments by the Commission prior to the publication of press releases and speeches made on behalf of the agency. As discussed in the response to the question above, even where the Chairman follows the letter of the Procedures and Commission views are solicited, they are routinely ignored. These actions do not foster an atmosphere of trust and cooperation.

- e. **What steps are necessary to avoid future disagreements over roles and responsibilities?**

A comprehensive analysis of the law might be a useful exercise, both for the present situation and as a resource in the future. As an outside perspective would, I believe, be widely accepted, I believe this would be an appropriate task for the Department of Justice's Office of Legal Counsel. Alternatively, Congress might charter an independent group of experts to review the law and provide such an analysis—as well as potential adjustments to improve its resistance to abuse.

- f. **Do you believe there are legislative changes necessary to clarify the Chairman's and the Commissioner's respective roles and responsibilities?**

To address ongoing issues associated with the appropriate access of information by the Commission, it would be helpful to reinforce the principle that the Commission has the authority to receive all information related to operation of the agency. Among various changes that might be made (including a direct statement to that effect), a revision to Sec. 2 (c) of the Reorganization Plan of 1980 to allow the EDO to directly provide information to the Commission, rather than through the Chairman,

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would ensure that the Commission is fully aware of all staff positions, concerns, and recommendations.

In addition, Congress might consider clarifying the reporting relationship of Commission-level offices (*e.g.*, the Office of the General Counsel and the Office of International Programs) to reinforce that these offices should provide information directly to the entire Commission, rather than through the Chairman. These changes would allow the Commission to have the best possible information when acting on issues of policy, rulemaking and adjudications. It would also ensure that the Commission has all necessary information when determining whether an area of doubt is a topic within the Commission's purview.

As discussed above, there have been concerns regarding the appropriate scope of the Chairman's role as chief spokesperson for the agency. Revisions to the Plan could reinforce that the Chairman's role as chief spokesperson for the agency is to reflect only those policy positions adopted by the Commission as a whole.

Considerable scrutiny has been applied to the Chairman's exercise of his emergency authority under Section 3 of the Reorganization Plan in response to the events at Fukushima. A clarification of the Chairman's emergency functions could be useful in the event of a future need to declare an emergency. For example, including a requirement that the Chairman make a public declaration of an emergency before exercising any such emergency functions would clarify the scope of any future emergency. In addition, Congress may wish to consider clarifying whether the Chairman's exercise of emergency functions can and should be triggered by events outside of the United States or at facilities that are not licensed by the NRC (unless the nature of the event, as in the case of the September 11, 2001 terrorist attacks, have the potential to impact the operation of NRC-licensed facilities). Obviously, for any law to be effective, those affected by it must comply with its requirements—this has been an issue in the case of the law as written as subsequent to his recent exercise of emergency functions, the Chairman, to date, has not supplied the "complete and timely report to the Commission on the actions taken during the emergency," as required by Section 3(d) of the Reorganization Plan.

Finally, legislative changes to clarify the responsibility of the Executive Director of Operations, the Chief Financial Officer and the General Counsel independent of the Commission would assist with some of the issues noted in the answers above. Congress might also consider an enhanced model for the NRC Office of General Counsel to further enhance the independence of that organization in assuring the legal quality of the agency's work and in providing advice to the Commission and staff.

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- 10. Prior to his December 7, 2011 letter to the White House, did you or your staff receive any reaction or feedback from Chairman Jaczko or his staff in response to the October 13, 2011 letters signed by you and your colleagues? Please explain your response and provide specific examples.**

We received no reaction or feedback from the Chairman in response to the October 13th letter prior to his December 7, 2011 letter to the White House.

- 11. Following his December 7, 2011 letter to the White House, has the Chairman taken steps to address the concerns raised by you and your colleagues? Please explain your response and provide any specific examples.**

The Chairman has not taken any steps to address the concerns raised in our October 13th letter. Most relevantly, we believe that information from the staff continues to be restricted.

- 12. What specific actions do you believe are necessary to restore internal and external confidence in the management and operations of the NRC?**

There is no substitute for continued vigilance and adherence to the principles and values our agency has practiced for over 30 years. I remain committed to those values. The public retains confidence in us when they see us make rational decisions in a predictable manner based on the best information available.

As I noted earlier, only a very substantial shift in leadership behavior and practices will remediate the situation and, thus, restore confidence. Holding to the agency's values and procedures, treating members of the staff with the respect they deserve, and doing business in an honest, straight-forward, and open manner would solve many issues. Also, I believe a public repudiation of the December 2011 disinformation campaign waged against the Commission (which was, as uncovered by members of the Senate Environment and Public Works Committee, orchestrated at least in part by the agency's own Office of Public Affairs) would be appropriate.

As little or none of this is likely to occur under the current leadership, I believe continued, close Congressional scrutiny is essential.

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13. Please respond to recent allegations that you and your colleagues obstruct the NRC's mission of protecting public health and safety.

These allegations are both baseless and repugnant and even worse, they are entirely irresponsible as they damage the credibility of the agency. The issues the Commission has with the Chairman are rooted in his lack of respect for the agency's values, his leadership practices, and his personal behavior.

We Commissioners, and all the senior staff, are singularly focused on the cause of protecting the health and safety of the public. Allegations to the contrary are meant to distract and confuse the serious issues before us.

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COMMISSIONER

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

January 27, 2012

The Honorable Darrell Issa
Chairman, Committee on Oversight
and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Chairman Issa:

I appeared before the Committee on Oversight and Government Reform on December 14, 2011, along with my colleagues on the Commission. On January 13, 2012, you forwarded questions for the hearing record. The responses to those questions are enclosed. Due to the sensitive nature of the responses, they have been labeled as "Not for Public Disclosure." I respectfully request the enclosure to this letter be held in confidence with access limited to Committee members and their staff.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Ostendorff".

William C. Ostendorff

Enclosure:
As stated

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Commissioner Ostendorff Responses to Additional Questions
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- 1) On December 12, 2011, the White House responded to the concerns raised in the letter you and your colleagues wrote on October 13, 2011.
- a. Do you believe the White House provided an adequate response to your concerns?
 - b. In your view, what steps must be taken to improve the current situation at the NRC?

Response:

- a. No, I do not believe the White House provided an adequate response to my concerns. The White House characterized the concerns as "management differences" when, in fact, the concerns are far more serious and have negatively impacted the work environment for the agency.
- b. To improve the current situation at the NRC, I believe that steps must be taken to rebuild trust between the Chairman and the Commission, and between the Chairman and the NRC staff. Since appearing before your Committee on December 14, 2011, I have suggested to Chairman Jaczko the following steps to improve the current situation at the NRC:
 - Select a new Chief of Staff (to replace the Chairman's departing Chief of Staff) from a pool of career NRC Senior Executive Service employees recommended to the Chairman by the Executive Director for Operations (EDO).
 - Convene a meeting between the NRC's senior leadership, including those present at the October 5, 2011 senior leadership meeting, and the full Commission, where the Chairman will commit to using a management style that is consistent with an open and collaborative work environment.
 - Invite a representative from each Commissioner office to attend the Chairman's morning meetings with the EDO and other Commission-level office directors.
 - Invite a representative from each Commissioner office to attend the Chairman's meetings with the NRC staff in preparation for the monthly Commission agenda planning meeting.

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Commissioner Ostendorff Responses to Additional Questions
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- 2) The Committee understands that Chairman Jaczko sought to remove the Executive Director for Operations William Borchardt from his position.
- a. Did the Chairman provide a clear explanation for his desire to remove Mr. Borchardt?
 - b. What was your response to the Chairman's attempt to remove Mr. Borchardt?
 - c. Do you have any concerns about the Chairman's efforts to remove Mr. Borchardt or how he handled the situation with you and your colleagues?
 - d. To your knowledge, has Mr. Borchardt received a negative performance review in his current role?

Response:

- a. Chairman Jaczko stated that his desire to remove the Executive Director for Operations (EDO), Mr. Borchardt, was due to communication challenges between him and Mr. Borchardt.
- b. During the first (August 29, 2011) of two closed Commission meetings on this matter, I suggested that Chairman Jaczko discuss his concerns with Mr. Borchardt. Subsequent to this meeting, I met with Mr. Borchardt to understand his perspectives on this matter. From my discussion with Mr. Borchardt, it became evident to me that the Chairman was seeking to remove the EDO because the EDO had not been willing to simply adhere to the Chairman's position on various policy matters, including how the NRC was addressing the Fukushima nuclear accident in Japan.

At the second closed meeting (August 31, 2011), I informed Chairman Jaczko that I did not support removal of Mr. Borchardt.

On October 11, 2011, I provided a memorandum to Chairman Jaczko and my colleagues on the Commission stating that I do not support removal of Mr. Borchardt. In that memorandum, I stated that "I am concerned about the challenges faced by the EDO and senior staff to carry out their responsibilities in an open and collaborative work environment. Therefore, I have significant reservations regarding any action to remove the EDO."
- c. Yes, I had concerns about Chairman Jaczko's efforts to remove Mr. Borchardt. Specifically, through my due diligence, it is my belief that Chairman Jaczko's motive for removing Mr. Borchardt stems from instances where Mr. Borchardt advocated steps that would keep the Commission informed of the NRC staff's position on Fukushima-related actions and other issues, instead of steps that were advocated by the Chairman.

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In addition, I was concerned about Chairman Jaczko's response to my October 11, 2011 memorandum in which I stated that I did not support removing Mr. Borchardt. Specifically, during the lunch break of the October 11, 2011 public Commission meeting on the NRC's actions in response to the Fukushima accident, Chairman Jaczko met with me to discuss my memorandum. Chairman Jaczko expressed his frustration with my memorandum and, as a consequence, said he was going to have "to process" my memorandum and suggested that he might cancel the afternoon portion of the Fukushima public Commission meeting. The Chairman did not show up for the second half of this important meeting, and Commissioner Apostolakis chaired the afternoon session of this public meeting.

- d. As of the date of this letter, Mr. Borchardt's final performance review rating has not been provided to the Commission for review and approval. It is my understanding, based on discussions with the EDO by my Chief of Staff, that Mr. Borchardt's overall performance rating assigned by Chairman Jaczko is lower than the overall rating he received during the previous performance review cycle.

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Commissioner Ostendorff Responses to Additional Questions
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- 3) In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko made comments that reflect his "contempt for the Commission itself and open disdain for the Internal Commission Procedures, a document that embodies governing principles from the NRC's organic legislation."

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

Response:

This specific language was included in the October 13, 2011 letter because of the comments Chairman Jaczko made at a meeting of the NRC's senior leadership. The Senior Executive Service (SES) managers attending this meeting have significant responsibilities, not only in carrying out the policies of the Commission, but also in presenting their best and unbiased judgment to the Commission in matters related to policy, rulemaking, and adjudication.

A number of SES managers present at the October 5 meeting expressed their grave concerns to me or my Chief of Staff about the messages they heard from Chairman Jaczko regarding information flow to the Commission, his disagreement with fellow Commissioners, and the importance of the NRC staff doing things the way Chairman Jaczko wanted them done. In addition, several attendees felt that the Chairman's statements sought to undermine the Commission and present the Commission as dysfunctional. Such statements, as presented to me or my staff, are paraphrased below:

- Many of you know that we are not getting along and I do not get along with certain members of the Commission.
- The Commission is slowing things down and focusing on too much detail.
- You all need to work better with me because I know how to get things through the Commission.
- I know how to get the Commission to do what I want.
- We need to press ahead with Fukushima actions because in the next six months it will not be on Congress' radar screen and we won't have the Congressional backing we need to do what needs to be done.
- If you want to get things done, you need to work with me because I can get things through the Commission.
- The Internal Commission Procedures do not align with my vision for the Chairman's roles versus the roles of the Commission.

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- 4) In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "intimidated and bullied senior career staff to the degree that he has created a high level of fear and anxiety resulting in a chilled work environment."
- a. What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.
 - b. In discussions with the White House following your October 13, 2011 letter, did you inform them of specific examples of harassment or intimidation? If yes, please explain these examples and any response you received from the White House?
 - c. How has Chairman Jaczko's behavior towards the staff chilled or otherwise affected the work environment?
 - d. How does a chilled work environment affect the operations and culture of the NRC?
 - e. How would the NRC respond to allegations of harassment, intimidation, or a chilled work environment at an NRC licensee?

Response:

- a. This specific language was included in the October 13, 2011 letter because a chilled work environment at the Nation's civilian nuclear safety regulator cannot be tolerated. A chilled work environment adversely affects our agency's ability to carry out our safety mission. Intimidation and bullying is an unacceptable behavior at any level of our organization.

I have had conversations with five senior SES managers who have been on the receiving end of such behavior by Chairman Jaczko. From these conversations, I was left with the impression that these managers were intimidated and bullied for expressing their views. Such behavior by the Chairman and the reactions of the recipients have created an environment where some individuals no longer feel comfortable expressing their independent, scientific judgments to the Chairman or the Commission.

- b. Yes. I informed the White House Chief of Staff of specific examples involving the Director of the Office of the Secretary of the Commission, the Deputy Executive Director for Reactor and Preparedness Programs, and a mid-level SES manager in the Office of Nuclear Reactor Regulation. I told the White House Chief of Staff that he would not tolerate such behavior in the White House staff. The White House Chief of Staff did not respond to this statement when I met with him and his counsel on October 24, 2011, nor did his December 21 letter respond to this concern.

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- c. It is my belief through discussions with certain senior staff that Chairman Jaczko's behavior has resulted in these staff not wanting to meet with the Chairman or not wanting to do anything that upsets the Chairman. Furthermore, I share the same observation and concern as provided by Mr. Borchardt in his testimony before your Committee on December 14, 2011. Specifically, Mr. Borchardt noted that "there's been a long-standing practice that the staff is responsive to individual commissioner's requests for information through oral, you know, communications. That continues. There is a higher degree of apprehension, though, today under the current environment, as the first panel discussed, that has, at least for me, a concern that there could be some reluctance to provide information as timely and as candidly."
- d. A chilled work environment is harmful to the NRC because it undermines the ability of our employees to voice concerns or differing views. The NRC needs to make its safety decisions based on technical, objective evidence and the professional staff's recommendations based on that evidence. If the Commission does not receive candid, frank recommendations from the professional staff, we cannot be effective decision-makers.
- e. For allegations of harassment, intimidation, or a chilled work environment at an NRC licensee, the NRC typically initiates investigative activities. These activities are either carried out by the NRC's Office of Investigations or, in some instances, referred to the licensee for review. If the allegation is substantiated, the NRC will take the appropriate enforcement actions, including orders and/or civil penalties, for any violations of NRC requirements.

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- 5) In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "ordered staff to withhold or modify policy information and recommendations intended for transmission to the Commission."

What specific incident or incidents prompted you to include this language in your letter to the White House?

Response:

From my periodic discussions with NRC senior managers, I learned that their recommendations were not ultimately provided to the Commission in the notation vote papers associated with the NRC's Near Term Task Force report (SECY-11-0093) and Southern Nuclear Operating Company's request related to their Combined License application (SECY-11-0118 – not publicly available due to attorney-client privilege). Through further inquiry, I learned that Chairman Jaczko provided direction to senior NRC staff on the specific content to be provided to the Commission.

In the case of SECY-11-0093, the original paper provided to the Commission contained the NRC staff's analysis of the Task Force report and recommended approach for addressing the Task Force's recommendations. Because the staff's approach was not in alignment with the Chairman's approach, the NRC staff was directed to withdraw the paper and replace it with a one-page, content-free transmittal memorandum.

In the case of SECY-11-0118, I learned that the staff's recommended option was not provided to the Commission. Instead, the option recommended to the Commission was that advocated by the Chairman.

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- 6) In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "interacted with us, his fellow Commissioners, with such intemperance and disrespect that the Commission no longer functions as effectively as it should."

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

Response:

This specific language was included in the October 13, 2011 letter because such behavior is unprofessional and erodes the collegiality of the Commission, which was designed by Congress to be a collegial decision-making body. It is my view that the lack of a collegial environment on the Commission has resulted in Commissioners and their respective staffs becoming reluctant to communicate with the Chairman and the Chairman's staff. Consequently, resolution of the Commission's business is often less efficient and more difficult than it should be.

From my discussions with other colleagues on the Commission, I have been made aware of angry phone calls from the Chairman to other Commissioners. In one instance, a Commissioner noted that the Chairman had angrily accused him of being a liar.

As for my specific experiences, I have had one phone call with the Chairman where he had raised his voice in anger because of a position I took on a matter before the Commission. In a separate, one-on-one periodic meeting, the Chairman raised his voice inappropriately, and I told him that I would terminate the meeting if he did not calm down. In addition, during a Commission agenda planning meeting on July 18, 2011, the Chairman gaveled me down and stormed out of the meeting while I was speaking about a suggested way forward with the Chairman's "roadmap" for Fukushima actions because a majority of Commissioners did not fully understand or support the Chairman's vision.

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Commissioner Ostendorff Responses to Additional Questions
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- 7) In the October 13, 2011 letter to the White House, you and your colleagues stated:
"Chairman Jaczko's behavior and management practices have become increasingly
problematic and erratic."

What prompted you to include this specific language in your letter to the White House?
Please provide any specific examples that demonstrate the behavior you described.

Response:

This specific language was included in the October 13, 2011 letter because the increasingly
problematic and erratic behavior and management practices have significantly eroded my
confidence in Chairman Jaczko's ability to lead the NRC. The Chairman's behavior and
management practices have deteriorated since July 2011.

Specific examples of problematic and erratic behavior include the Chairman threatening to
cancel the Vogtle mandatory hearing because the scheduling note approved by four
Commissioners was not in line with how the Chairman wanted to conduct the mandatory
hearing. Also, as noted in my response to question 2.c., the Chairman wanted to cancel the
second half of the October 11, 2011 public Commission meeting on the NRC's Fukushima
actions, because he was upset with my position to not support removal of the NRC's
Executive Director for Operations. The Chairman did not show up for the second half of this
important meeting, and Commissioner Apostolakis chaired the afternoon session of this
public meeting.

In yet another example, the Chairman refused to allow the Secretary of the Commission to
transmit to the Commission for review and approval the General Counsel's legal analysis
and recommended changes related to the revised Internal Commission Procedures.
Although four Commissioners had requested the Secretary to transmit the document to the
Commission, the Chairman refused to allow the Secretary to do so and told her that "you
work for me." Following this direction, the Chairman convened a meeting with senior NRC
staff to remind them of who he believed they worked for. In this meeting, it was reported that
the Chairman's message was that they work for and take direction from him, and that if they
received requests or questions from Commissioner offices, they should route those requests
or questions through him and he would handle the Commission.

I found the Chairman's responses to these instances to be unprofessional.

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Commissioner Ostendorff Responses to Additional Questions
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- 8) On December 12, 2011, the White House sent a letter to Chairman Issa regarding the management issues at the NRC. In the letter, the White House stated that the "present tensions appear to be rooted in the very structure of the NRC and in disagreements over policy matters."

Do you agree with the White House's assessment? Why or why not?

Response:

No, I did not agree with the White House's assessment of the issues raised in our October 13, 2011 letter. The issues in the October 13, 2011 have absolutely no relationship to any differences among Commissioners on policy matters. The current Commission is comprised of five members with diverse experiences and professional backgrounds. By this very nature, differences in policy matters are to be expected. Such differences are a strength of this decision-making body.

Furthermore, the issues in the October 13, 2011 are not rooted in the structure of the NRC—a structure that has served the American public well since the Reorganization Plan No. 1 of 1980. The Commission has captured the mandate and structure of the Reorganization Plan in its Internal Commission Procedures, which help serve as the basis for Commission operations.

It is my view that the present tensions are rooted in the behavior and management practices exhibited by Chairman Jaczko.

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Commissioner Ostendorff Responses to Additional Questions
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- 9) In his December 7, 2011 letter to the White House, Chairman Jaczko suggested that your concerns about the Commission's ability to function effectively are not rooted in policy differences but arise "from a lack of understanding the current Commissioners have of their statutory roles at the agency."
- a. Do you agree with the Chairman's assertion that you and your colleagues lack an understanding of your statutory role at the agency?
 - b. How does your interpretation of your role at the agency differ from that of previous Commissioners? Have you sought advice from other current or former Commissioners on your role at the NRC?
 - c. Based on your understanding of previous Commissions, does the current Chairman's interpretation of his role and responsibilities differ significantly from his predecessors?

The Chairman also noted "this is not the first time that confusion over differences between the roles and responsibilities of the NRC Chairman and Commissioners has caused communication problems[.]" citing a 1999 report by the Office of the Inspector General.

In 1998, disagreements with then-Chairman Shirley Anne Jackson over her interpretation of authority prompted the Commission to revise the Internal Commission Procedures in an effort to clarify the roles and responsibilities of the Commission.

In his January 2000 response to the 1999 IG report, Chairman Richard Meserve noted "[a]lthough the report raises questions about how the Commission interacts, it fails to recognize that in 1998 the Commission undertook a review of its internal procedures."

- d. Have the revisions to the Internal Commission Procedures approved by the Commission resolved disagreements or confusion over roles and responsibilities with Chairman Jaczko? Why or why not?
- e. What steps are necessary to avoid future disagreements over roles and responsibilities?
- f. Do you believe there are legislative changes necessary to clarify the Chairman's and the Commissioner's respective roles and responsibilities?

Response:

- a. No. It is clear to me that my role as a Commissioner pertains to matters related to the Commission's functions in policy, issuance of orders and rulemaking, and decision-making on adjudicatory matters. I have a full grasp of the legal authority of the NRC

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Chairman under the Energy Reorganization Act of 1974 and the Reorganization Plan No. 1 of 1980.

Under the 1980 reorganization of the NRC, the Commission as a whole formulates policy and regulations, issues orders, and adjudicates legal matters brought before it. Policy formulation includes major administrative decisions with policy implications. The 1980 reorganization confirms the ultimate authority of the Commission by providing that "[t]he Commission may determine by majority vote, in an area of doubt, whether any matter, action, question or area of inquiry pertains to one of these functions."

All other functions of the Commission are reserved for the Chairman as official spokesperson for the Commission and principal executive officer of the Commission, with ultimate responsibility to the Commission and the public for the proper day-to-day management and administration of the agency. As the principal executive officer, the Chairman is governed by the general policies of the Commission. Among other things, the Chairman and the Executive Director for Operations, through the Chairman, must ensure that the Commission is fully and currently informed about matters within its functions.

- b. I believe that my interpretation of my role as a Commissioner is generally consistent with interpretations of previous Commissioners I have spoken with on this matter. I have sought advice from current and six former Commissioners (including three former Chairmen) on the role of individual Commissioners vis-à-vis that of the Chairman.
- c. Yes. I have had detailed discussions with two former NRC Chairmen on their interpretations of roles and responsibilities of the Chairman, and less detailed discussions with a third individual who had served as Chairman. Based on these discussions, I believe that Chairman Jaczko's interpretation differs significantly from his predecessors with respect to information flow to the Commission.

Furthermore, from observations during my 22 months on the Commission, Chairman Jaczko has held strong views on certain matters being reserved for his role as principal executive officer, rather than being policy issues for the Commission. Other Commissioners and I have disagreed with the Chairman on some of these matters.

- d. The recent comprehensive revisions to the Internal Commission Procedures have resulted in greater clarity in the procedures and have helped, in some areas, resolve disagreement or confusion over roles and responsibilities with Chairman Jaczko.

For example, the revised procedures provide for clear delineation of the Chairman's role in approving Commissioner international travel. Also, revisions were incorporated to provide for Commission approval of individual Commissioner requests that could

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Commissioner Ostendorff Responses to Additional Questions
House Committee on Oversight and Government Reform
Hearing on "The Leadership of the Nuclear Regulatory Commission"

arguably pertain to the Chairman's day-to-day management responsibilities. The revised procedures also include new provisions to improve the flow of information to the Commission; however, the efficacy of these revisions has yet to be demonstrated.

- e. To avoid future disagreements, I think that improving information flow to the Commission and ensuring that the staff is not influenced by the Chairman on the content of that information are essential steps. Specific steps are noted in my response to question 1.b.
- f. I do not recommend any legislative changes at this time. The legislation is clear. Reorganization Plan No. 1 of 1980 states that the "Chairman . . . shall be responsible for insuring that the Commission is fully and currently informed about matters within its functions."

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Commissioner Ostendorff Responses to Additional Questions
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Hearing on "The Leadership of the Nuclear Regulatory Commission"

- 10) Prior to his December 7, 2011 letter to the White House, did you or your staff receive any reaction or feedback from Chairman Jaczko or his staff in response to the October 13, 2011 letter signed by you and your colleagues? Please explain your response and provide any specific examples.

Response:

No. However, he did suggest that at some point we should have lunch and discuss how things were going. Presumably, this outreach was to discuss the letter.

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Commissioner Ostendorff Responses to Additional Questions
House Committee on Oversight and Government Reform
Hearing on "The Leadership of the Nuclear Regulatory Commission"

- 11) Following his December 7, 2011 letter to the White House, has the Chairman taken steps to address the concerns raised by you and your colleagues? Please explain your response and provide any specific examples.

Response:

On December 16, 2011, the Chairman visited me in my office to apologize for gaveling me down at the July 18, 2011 agenda planning meeting. It is my understanding that after the December 15, 2011 Senate hearing, the Chairman also apologized to certain senior staff for having yelled at them in a harassing and intimidating manner.

On January 23, 2011, the Chairman also invited the Commission, as a body, to appear before NRC senior managers to reaffirm the Commission's commitment to the NRC's values and critical safety mission.

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Commissioner Ostendorff Responses to Additional Questions
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12) What specific actions do you believe necessary to restore internal and external confidence in the management and operations of the NRC?

Response:

The following items are actions that I believe would help restore internal and external confidence in the management and operations of the NRC.

- There needs to be clear actions by Chairman Jaczko to improve the flow of information to the Commission, to change his management style to one that is consistent with the NRC's organizational values, and to engage his colleagues on important policy matters.
- The Chairman's new Chief of Staff should meet one-on-one with the Executive Director for Operations (EDO), the Deputy Executive Directors, Office Directors, and Commissioner Chiefs of Staff to find out how the Chairman's office can improve and commit to greater openness and transparency of communications.
- Convene a meeting between the NRC's senior leadership, including those present at the October 5, 2011 senior leadership meeting, and the full Commission, where the Chairman will commit to using a management style that is consistent with an open and collaborative work environment.
- Invite a representative from each Commissioner office to attend the Chairman's morning meetings with the Executive Director for Operations and other Commission-level office directors.
- Invite a representative from each Commissioner office to attend the Chairman's meetings with the NRC staff in preparation for Commission agenda planning.
- Authorize the EDO to immediately fill the Region III Regional Administrator position, as has been recommended by the EDO for many months.
- Immediately cease the weekly meetings with the EDO's direct reports to signal trust in the EDO and the Deputy Executive Directors.
- Commit to his fellow Commissioners and senior managers to not lose his temper and to interact in a professional manner.

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Commissioner Ostendorff Responses to Additional Questions
House Committee on Oversight and Government Reform
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- 13) Please respond to recent allegations that you and your colleagues obstructed the NRC's mission of protecting public health and safety.

Response:

In recent media reports, it has been suggested the NRC has not taken action in the aftermath of the tragic events at Japan's Fukushima-Daiichi nuclear power plant. Some reports have suggested that the Commission has chosen to over analyze the matter rather than take action. Some reports have even suggested that action has been delayed at the urging of industry. Such suggestions are at best uninformed and at worst irresponsible.

Soon after the devastating March 2011 earthquake and tsunami struck northern Japan, our agency launched a series of inspections to assure that all nuclear plants were meeting all applicable requirements and would be prepared to deal with unexpected disasters. Where deficiencies were uncovered, plants made immediate corrections. The Commission then chartered an expert task force to review the chain of events that led to the subsequent nuclear crisis and conduct a systematic and methodical assessment of U.S. regulatory requirements. This task force issued a highly regarded report on July 12, 2011, which firmly concluded that U.S. plants are safe and would be better able to withstand a Fukushima-style natural disaster than were Japanese plants. However, the task force also concluded that we should make additional improvements and provided 12 recommendations to enhance the regulations that assure the protection of the American people.

In keeping with the NRC's efforts to improve openness and transparency, on August 19, 2011, the Commission directed the NRC staff to begin immediately its engagement with stakeholders and to identify within three weeks those actions that should be implemented without delay. The result of this work came to the Commission on September 9, 2011, and was approved unanimously on October 18, 2011. The Commission also instructed staff to strive to complete all regulatory changes based on the lessons of Fukushima within five years, with the most important items (i.e., those related to the total loss of power) completed within 30 months.

As a result of these decisions, work on seven of the original 12 task force recommendations is well underway. NRC staff has held numerous public meetings with all stakeholders to formulate the various regulatory actions that will be used to enhance further the safety of U.S. plants. Based in part on this outreach, the nuclear industry has begun to move forward voluntarily to address several areas of safety significance.

Moreover, in December 2011, the Commission approved staff action on all remaining task force recommendations (except one that the Commission concluded does not have immediate safety implications and will be reviewed over the longer term). Also, based on the agency's interactions with stakeholders, we identified several additional issues the task

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force had not recommended. At least one such issue is near the top of the agency's action list. In February 2012, the Commission expects to receive draft orders to be issued to NRC licensees for new requirements related to certain task force recommendations. I expect to carry out my responsibilities related to the review of these orders in a thoughtful and timely manner.

Nuclear safety matters are technically complex. Decisions on nuclear safety matters must be made only with careful deliberation and as much transparency as possible. Nevertheless, I believe that the Commission has acted promptly, responsibly, and independently to address the lessons learned from Fukushima. The NRC must also assure that our post-Fukushima efforts do not displace ongoing work of high safety significance. I am very proud of the performance of the outstanding NRC staff and of the tremendous progress they have made in a short period of time to absorb the lessons of Fukushima and further enhance the safety of U.S. nuclear power plants. There remains a lot of work ahead, but I believe the NRC is off to an excellent start and that, in the end, history will judge our actions as responsible and proper.

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February 24, 2012

The Honorable Darrell Issa
Chairman, Committee on Oversight
and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your letter of January 13, 2012, in which you posed a number of questions to me as follow-up to the December 14, 2011, hearing entitled "The Leadership of the Nuclear Regulatory Commission." Enclosed are my responses. If you need additional information or have any further questions, please contact me.

Sincerely,

/RA/

R. W. Borchardt

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

**Response to Questions from
Chairman Darrell Issa
Committee on Oversight and Government Reform
Hearing on “The Leadership of the Nuclear Regulatory Commission”**

Question 1. **Has Chairman Jaczko ever asked you or NRC staff under your supervision to delay delivery of – or make substantive changes, edits, or otherwise withhold information from – a policy paper before it was sent to the Commission?**

a) If yes, please provide specific examples.

ANSWER

Based on my consultation with the NRC’s Office of the Inspector General (OIG), I understand that this question is the subject of an ongoing OIG investigation. The following response is based upon my best personal recollection. However, I expect that in light of OIG’s access to a broad scope of investigative information, the OIG report will provide a more detailed and complete discussion.

The schedule for staff submittal of policy papers to the Commission is routinely discussed with the Chairman and his staff. On occasion, the staff receives direction on when to submit papers in order to facilitate effective Commission review and overall Commission workload. The technical and policy content of some draft papers is discussed in periodic meetings between the Chairman and me or between the Chairman and members of the senior staff. There were two instances when substantive changes were made to staff papers, or to positions being developed

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by the staff as a result of direction from the Chairman. The Chairman directed that a staff paper to the Commission associated with the Fukushima lessons learned task force be withdrawn because he did not agree with the staff recommendations and a member of his staff provided a significant re-write to the paper. The second example involved the Chairman's direction that the staff's recommendations relating to potential issuance of the Vogtle combined license should be modified based upon his position on the matter.

Question 2. **Has the Chairman or his staff ever directed you or NRC staff under your supervision to withhold information from other members of the Commission that you believed was necessary to keep the Commission fully and currently informed?**

ANSWER

Based on my consultation with the NRC's Office of the Inspector General (OIG), I understand that this question is the subject of an ongoing OIG investigation. The following response is based upon my best personal recollection. However, I expect that in light of OIG's access to a broad scope of investigative information, the OIG report will provide a more detailed and complete discussion.

The Chairman has direct influence on the timing of when staff papers are submitted to the Commission as well as whether any specific topic constitutes a Commission "policy" issue or whether that issue is an "implementation" issue under his sole responsibility. In the past this determination was most frequently made by the EDO and his staff. I believe that some information that would have been provided to the Commission under previous Chairmen has not been provided to the Commission in written form. Some of this information may have been provided during meetings between staff members and Commissioners.

Question 3. Has Chairman Jaczko ever directed you or NRC staff under your supervision not to hold a public meeting on any matter? If yes, why did he order you or your staff not to hold the public meeting?

ANSWER

Chairman Jaczko and all previous Chairmen have a prominent role in developing the schedule and agenda for all Commission meetings including facilitating the Commission decision on what topics should be the subject of public Commission meetings. The NRC staff frequently provides topics for the Commission's consideration, but responsibility for the final decision rests with the Commission.

As a separate matter, the NRC staff conducts approximately 1,000 working level public meetings each year. I am not aware of any occasions when the Chairman ordered me or a member of the staff not to hold a public meeting.

Question 4. Have you witnessed or been made aware of behavior or actions on the part of the Chairman that in your view are inconsistent with the NRC's organizational values?

- a) If yes, please provide examples and explain why they are inconsistent with the organizational values and how that affects the staff.
- b) If you witnessed or were made aware of similar behaviors or actions by a senior manager under your supervision, how would you respond?
- c) Why are the NRC's organizational values important to the operations of the agency?

ANSWER

Based on my consultation with the NRC's Office of the Inspector General (OIG), I understand that this question is the subject of an ongoing OIG investigation. The following response is based upon my best personal recollection. However, I expect that in light of OIG's access to a broad scope of investigative information, the OIG report will provide a more detailed and complete discussion.

- a) I have witnessed and been made aware of the Chairman interacting with members of the staff in a manner that I believe was inconsistent with the NRC organizational values. The staff involved in those interactions described their reactions to those meetings with terms that include harassing, humiliating, and intimidating. An interaction with that result fails to

support the NRC organizational values of respect, cooperation, and openness, and is not conducive to an open and collaborative work environment. Adverse personal interactions have the potential to inhibit the free flow of information and the effective operation of the agency.

- b) It is my expectation that if I or a member of the staff senior management team witnessed similar behaviors by a member of the staff, immediate corrective action would be taken, depending on all the pertinent circumstances, followed by one-on-one counseling and coaching at a minimum.

- c) The NRC organizational values are critically important to the success of our safety mission. They continue to guide our interactions within the staff, with our regulated community and with all other stakeholders. They are part of the staff's daily life at the NRC and promote mutual support, open communication, and a fully engaged staff. I believe an open and collaborative work environment encourages interdependence and cooperation among the staff. It also enables us to make well informed decisions and provide the Commission with our best technical analyses and recommendations.

Question 5. **Have you and/or other senior managers attempted to shield or protect NRC staff from interference by Chairman Jaczko's Office? Please describe any specific instances.**

ANSWER

Based on my consultation with the NRC's Office of the Inspector General (OIG), I understand that this question is the subject of an ongoing OIG investigation. The following response is based upon my best personal recollection. However, I expect that in light of OIG's access to a broad scope of investigative information, the OIG report will provide a more detailed and complete discussion.

The staff senior managers have a deep commitment to the NRC's mission and our organizational values. It has been our intent to implement the Commission's program and policy direction in a way that minimized the staff's awareness and focus on the adverse interactions that occurred between the Chairman and other Commissioners and between the Chairman and members of the senior staff. This was done to minimize distraction from mission-related work.

Question 6. **Have you and/or other senior managers experienced difficulties or faced challenges in carrying out your management responsibilities as a result of the current leadership at the NRC? Please explain and provide any specific examples.**

ANSWER

Based on my consultation with the NRC's Office of the Inspector General (OIG), I understand that this question is the subject of an ongoing OIG investigation. The following response is based upon my best personal recollection. However, I expect that in light of OIG's access to a broad scope of investigative information, the OIG report will provide a more detailed and complete discussion.

The NRC has a long established tradition of working in an open, collaborative, and mutually supportive work environment that places primary importance on our nuclear safety mission. We have encouraged each other to raise issues, challenge the status quo, and resolve differences in a constructive and open manner. The well-documented adverse interactions between the Chairman and senior members of the staff have created an environment that can inhibit the free flow of information and a weakening of teamwork between the Chairman's office and the staff. In addition, a lack of openness and incomplete sharing of important background information by the Chairman's office have complicated the staff managers' ability to efficiently direct agency resources. Notwithstanding this challenge, the staff management team's focus on professional behavior and mission accomplishment has enabled the staff to be successful.

Question 7. **Has Chairman Jaczko ever bullied or intimidated senior career staff?**
If yes, please describe any specific examples that you are aware of.

ANSWER

Based on my consultation with the NRC's Office of the Inspector General (OIG), I understand that this question is the subject of an ongoing OIG investigation. The following response is based upon my best personal recollection. However, I expect that in light of OIG's access to a broad scope of investigative information, the OIG report will provide a more detailed and complete discussion.

I have witnessed and been made aware of the Chairman interacting with members of the staff in a manner that I believe was inconsistent with the NRC organizational values. The staff described their reactions to those meetings with terms that include harassing, humiliating, and intimidating. An interaction with that result fails to support the NRC organizational values of respect, cooperation, and openness, and is not conducive to an open and collaborative work environment. Adverse personal interactions have the potential to inhibit the free flow of information and the effective operation of the agency.

Question 8. **How would the NRC respond to allegations of harassment, intimidation, or a chilled work environment at an NRC licensee?**

a) Please explain why such behavior is detrimental to nuclear safety.

ANSWER

The NRC has an established program for thoroughly investigating safety-related allegations that could include concerns arising from harassment, intimidation, or a chilled work environment. The evaluation of safety concerns from industry workers and other external stakeholders is an integral part of NRC's efforts in accomplishing our mission, and the staff, at all levels, is committed to a strong and effective allegation program. The agency will investigate discrimination complaints arising from licensee actions against a worker for raising safety concerns to management or the NRC.

The NRC expects licensees to establish and maintain a "safety-conscious work environment" that encourages employees to raise safety concerns to their management, free of any fear of reprisal for doing so. Such a work environment is critical to a licensee's ability to safely carry out its responsibilities. Workers at an NRC-licensed facility are the first line of defense for preventing accidents and protecting public health and safety. Their knowledge, operating experience, and insight as nuclear workers give them the ability to identify safety concerns to their employer and the NRC so that problems may be corrected.

Question 9.

In their October 13, 2011 letter to the White House, the Commissioners noted the Chairman's appearance at an October 5, 2011 periodic meeting with you and other senior career executives.

- a) Please explain the circumstances of the October 5, 2011 meeting including: (i) its intended purpose; (ii) why Chairman Jaczko attended the meeting; (iii) whether his attendance was consistent with the practice of previous Chairmen; and (iv) if other Commissioners were invited or otherwise aware of the opportunity to attend.

- b) Please explain your recollection of the Chairman's participation at this meeting including any comments, responses, or messages he provided to you and senior career executives in attendance.

- c) Please provide any other reactions or relevant information about this meeting.

ANSWER

- a) In addition to the day to day supervision of staff activities the EDO meets biannually with senior staff management (approximately 25 individuals) for 1-2 days to review the agency's performance and to discuss issues important to the day to day operations of the staff. This meeting is known as the Senior Leadership Meeting (SLM). On

October 5, 2011, the Chairman attended the meeting for approximately 1 hour to deliver brief remarks and answer questions. Previous Chairmen have participated in these meetings in similar fashion. The other Commissioners were not invited or offered the opportunity to attend the October 5th meeting. Commissioners Apostolakis, Magwood, and Ostendorff attended a similar meeting shortly after they joined the Commission as an opportunity for a brief introduction. This was a special circumstance. The other Commissioners do not normally attend the SLM.

b & c) Based on my consultation with the NRC's Office of the Inspector General (OIG), I understand that this question is the subject of an ongoing OIG investigation. The following response is based upon my best personal recollection. However, I expect that in light of OIG's access to a broad scope of investigating information, the OIG report will provide a more detailed and complete discussion.

The Chairman explained that he was late for his presentation due to a heated discussion with another Commissioner on Fukushima path forward topics. His informal presentation made the following points:

- Staff needs to work closely with the Chairman. He can get the Commission to do what he wants. Staff shouldn't present views that differ from the Chairman's views to other Commissioners.
- Don't worry about the recently approved Commission internal procedures; he's not compelled to follow them and the Commission doesn't always follow them.
- Commission deals with Policy only. Chairman provides day to day direction.

In my view, the staff present for this presentation was quite surprised by the Chairman's comments since this was the first time many of them became aware of the serious conflict between the Chairman and his fellow Commissioners.

Question 10. Have you experienced any form of reprisal or retaliation by the Chairman or his staff for any action or recommendation that you pursued in your official capacity? If yes, please explain any specific examples and, to your knowledge, why your action or recommendation prompted this response.

ANSWER

I have received a form of verbal direction or verbal counseling that, at least in my view, was not consistent with the NRC values that we endeavor to model in our own behavior. Examples include the Chairman taking exception to my efforts to share what I thought was relevant information with other Commissioners and the development of a staff position on a particular topic resulting in a recommendation that we would provide to the Commission. In October 2011, the Chairman proposed that I be removed from my position as EDO. See my response to question 13.

Question 11. Has the Chairman ever conveyed an expectation that you or your staff support his preferred policy options or recommendations when discussing policy matters with other members of the Commission?

a) If yes, please explain how and when this expectation was conveyed, including specific examples.

ANSWER

Based on my consultation with the NRC's Office of the Inspector General (OIG), I understand that this question is the subject of an ongoing OIG investigation. The following response is based upon my best personal recollection. However, I expect that in light of OIG's access to a broad scope of investigative information, the OIG report will provide a more detailed and complete discussion.

a) The senior staff management (approximately 25 individuals) meets biannually to review the agency's performance and discuss issues important to the day to day operations. This meeting is known as the Senior Leadership Meeting (SLM). On October 5, 2011, the Chairman attended the meeting for approximately 1 hour to deliver brief remarks and answer questions. His informal presentation made the following point:

- Staff needs to work closely with the Chairman. He can get the Commission to do what he wants. Staff shouldn't present conflicting views to other Commissioners.

On a separate occasion, two senior staff members and I were invited to a meeting in the Chairman's office. In that meeting, the Chairman expressed disappointment in a vote cast by another Commissioner on a Fukushima lessons learned matter. The Chairman told us that he knew this other Commissioner had discussed his position with all three of us before casting his

vote. He asked whether we wanted to be part of "his team" or not. He told us that he expected we would speak to him before we discussed a policy issue with another Commissioner.

Question 12. Has the Chairman ever suggested that you or members of the NRC technical staff under your supervision need to be “on his team” or any similar message to that effect? If yes, please explain any specific examples and/or the context.

ANSWER

Please see the answer to question 11.

Question 13. **The Committee understands that there was an effort on the part of the Chairman to obtain his colleagues' support for your removal from your current position.**

- a) Were you aware that the Chairman wanted to remove you from your position? If yes, please explain the basis of your understanding.**

- b) Do you know why the Chairman wanted to remove you from your position? Were you ever consulted or provided specific reasons?**

ANSWER

Based on my consultation with the NRC's Office of the Inspector General (OIG), I understand that this question is the subject of an ongoing OIG investigation. The following response is based upon my best personal recollection. However, I expect that in light of OIG's access to a broad scope of investigative information, the OIG report will provide a more detailed and complete discussion.

- a)** I was not made aware of the Chairman's efforts to remove me from the EDO position or that two closed Commission meetings were held on that topic until after the closed Commission meetings were held.

- b)** Chairman Jaczko has not discussed with me his actions to remove me from the EDO position or the basis for my proposed removal.

Question 14. **What specific actions do you believe are necessary to restore internal and external confidence in the management and operations of the NRC?**

ANSWER

I believe that the agency's career managers have the confidence of our employees and external stakeholders. In my communications with senior managers and with the staff, I regularly stress the importance of an open and collaborative work environment and the importance of living the NRC values.

I believe that restoration of the NRC's damaged reputation must begin with a clear acknowledgement of personal responsibility and a commitment by the entire Commission to the NRC mission, principles of good regulation, and the NRC organizational values. These words will need to be put into action for an extended period in order to truly regain the trust of internal and external stakeholders.

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

February 10, 2012

COMMISSIONER

The Honorable Darrell E. Issa
Chairman, Committee on Oversight
And Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

In response to your letter of January 13, 2012, please find enclosed my answers to the questions for the hearing record. These answers include sensitive non-public information. Therefore, it is requested that they be held in confidence with access limited to the Committee and its staff.

Please contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "George Apostolakis", written over a horizontal line.

George Apostolakis

Enclosures: as stated

cc: The Honorable Elijah E. Cummings, Ranking Member

Commissioner George Apostolakis
U.S. Nuclear Regulatory Commission
Responses to Questions for the Record from Chairman Darrell Issa
Committee on Oversight and Government Reform

NOT FOR PUBLIC DISCLOSURE

Hearing on "The Leadership of the Nuclear Regulatory Commission"

1. *On December 12, 2011, the White House responded to the concerns raised in the letter you and your colleagues wrote on October 13, 2011.*

a. *Do you believe the White House provided an adequate response to your concerns?*

Answer: I don't presume to judge the adequacy of the White House response. Although his response did not directly address our specific concerns, I'm pleased with the serious and prompt attention that former Chief of Staff Daley gave to our letter, as well as the time he spent individually with each Commissioner listening to our concerns. I expect that the final resolution of our concerns will take time.

b. *In your view, what steps must be taken to improve the current situation at the NRC?*

Answer: As I said during my testimony, the most important actions are for the Chairman to control his temper and allow the staff to provide their frank views to the Commission. At the hearing, Ranking Member Cummings asked the Chairman whether he could "live with that", to which the Chairman replied, "Absolutely."

2. *The Committee understands that Chairman Jaczko sought to remove Executive Director for Operations William Borchardt from his position.*

a. *Did the Chairman provide a clear explanation for his desire to remove Mr. Borchardt?*

Answer: The Chairman explained that his main motivation in seeking to remove the EDO was based on the EDO's lack of communication with him.

b. *What was your response to the Chairman's attempt to remove Mr. Borchardt?*

Answer: Initially, I acknowledged that it would be a significant management challenge if communication difficulties existed between the Chairman and the EDO. I supported exploring the retirement eligibility option, if the EDO were to consider voluntarily retiring in the near future. Subsequently, I came to believe that the Chairman's motivation stemmed more from instances where the EDO resisted presenting the Chairman's views to the Commission as the staff's views.

c. *Do you have any concerns about the Chairman's efforts to remove Mr. Borchardt or how he handled the situation with you and your colleagues?*

Answer: Removing the EDO would be a mistake for several reasons. The staff respects Mr. Borchardt and values his leadership. His leadership, supported by other senior staff officers, has been critical in achieving the agency's high performance and external recognition, as well as maintaining the staff's confidence in the agency during challenging periods. Endeavoring to remove the EDO under these circumstances could contribute to a decline in the Agency's open collaborative work environment and safety culture.

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Commissioner George Apostolakis
U.S. Nuclear Regulatory Commission
Responses to Questions for the Record from Chairman Darrell Issa
Committee on Oversight and Government Reform

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Hearing on "The Leadership of the Nuclear Regulatory Commission"

d. *To your knowledge, has Mr. Borchardt received a negative performance review in his current role?*

Answer: Mr. Borchardt's final performance rating for FY 2010, as recommended by the Chairman and approved by the Commission on January 26, 2011, was outstanding. The Chairman recommended and the Commission approved the highest category of SES bonus award for the EDO.

3. *In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jacczo made comments that reflect his "contempt for the Commission itself and open disdain for the Internal Commission Procedures, a document that embodies governing principles from the NRC's organic legislation."*

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

Answer: Examples include:

- Statements at a senior leadership meeting that were perceived as reflecting contempt for the Commission and disdain for the Commission's procedures.
- Personal experience with intemperate and disrespectful behavior.
- Outburst of temper and storming out of a Commission's agenda planning meeting.
- Publicly criticizing the Commission as more focused on process than safety. For instance, the Chairman in his vote on the Fukushima Dai-ichi Task Force recommendations, SECY-11-0093, stated: "...voting only on process at this point has the advantage of being in line with the majority of my colleagues on the Commission who have voted on process rather than on the substance of the recommendations. This approach has the disadvantage, however, of encouraging the current Commission's preoccupation with process at the expense of nuclear safety policy - a focus which makes this important government body less effective and less efficient."
- When the Chairman's staff was asked at a Chief-of-Staff meeting if the Chairman was exercising emergency authority with regard to the Fukushima-Dai-ichi disaster, the Commission offices did not get an answer. Subsequently, the Director of the Office of Congressional Affairs, who reports to the Chairman, advised a Congressional staff member that the Chairman had been exercising his statutory emergency authority since day one. This was not ideal communication. However, the Chairman and the staff did supply the Commission with substantial on-going information about the activities of the emergency operations center.
- On a number of occasions, the Chairman's actions reflected disregard for the will of the majority. For example, after the Chairman responded to a letter from this Committee that did not conform to the language of the letter approved by the four Commissioners, the Commission had to send a separate letter to this Committee (dated March 31, 2011), attaching the response that had been approved by the four Commissioners. On another occasion, the same four Commissioners had to submit a separate supplemental response to post-hearing questions.
- The Commission had difficulty getting a voting paper from the Secretary of the Commission, who by statute reports directly to the Commission, even after four Commissioners had affirmed that the paper should be sent to the Commission.

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Commissioner George Apostolakis **NOT FOR PUBLIC DISCLOSURE**
 U.S. Nuclear Regulatory Commission
 Responses to Questions for the Record from Chairman Darrell Issa
 Committee on Oversight and Government Reform

Hearing on "The Leadership of the Nuclear Regulatory Commission"

- The Chairman prevented a scheduling note approved by the majority of the Commission, with which he disagreed, from being issued in a timely manner.
 - In response to concerns regarding his behavior, the Chairman told me that the Commissioners should complain to the White House.
 - On October 20, 2011, shortly after the Commissioners' letter to former Chief of Staff Daley, the Office of Public Affairs issued a press release criticizing the Commission. The press release quoted the Chairman as follows: "The station blackout rulemaking is an achievable goal...It will, however, be complicated by the Commission's direction to initiate the rulemaking through an advance notice of rulemaking rather than as a proposed rule. This will add an extra step to the process. Nevertheless, addressing station blackout is a high priority, and I will do my best to lead the staff in accomplishing this effort."
 - Subsequent to the letter, the Office of Public Affairs, which reports directly to the Chairman, promptly encouraged the media to read Congressman Markey's report that accused the four members of the Commission as engaged in a conspiracy to undermine safety.
4. *In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "intimidated and bullied senior career staff to the degree that he has created a high level of fear and anxiety resulting in a chilled work environment."*
- a. *What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.*

Answer: I had received a number of reports of instances in which the Chairman yelled and lost his temper with senior staff. I had also experienced several incidents in which the Chairman reacted intemperately because of my disagreement or possible disagreement with his position. In addition, I was also aware that the Office of Inspector General (OIG) report of June 6, 2011, states: "A number of NRC senior managers interviewed described examples of the Chairman losing his temper with them or stories they had heard about him losing his temper with others." It also states: "Chairman Jaczko acknowledged that he sometimes loses his temper. He said he worked to control it and there are times when he has wished he has said or done things differently. He said he mainly loses his temper with the Commissioners, but acknowledged that there have been a few times when he has said some fairly strong things to the staff. He concluded that his behavior created an environment sometimes in which it is difficult for people to work with him."

A memo to the Commission from a senior member of the Office of Nuclear Materials Safety and Safeguards dated June 20, 2011, stated: "The information suppression and manipulation at the Commission level, as described in the OIG report, permeates [sic] the activities of this Division and adversely impact the NRC as an independent licensing organization. However, the OIG report fails to capture the scale of the threat posed by political influence over our staff and our mission."

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Commissioner George Apostolakis
U.S. Nuclear Regulatory Commission
Responses to Questions for the Record from Chairman Darrell Issa
Committee on Oversight and Government Reform

NOT FOR PUBLIC DISCLOSURE

Hearing on "The Leadership of the Nuclear Regulatory Commission"

- b. *In discussions with the White House following your October 13, 2011 letter, did you inform them of specific examples of harassment or intimidation? If yes, please explain these examples and any response you received from the White House.*

Answer: I described a report that a manager had been humiliated in a briefing that occurred a week after we sent our memo to the Chairman and our October 13, 2011 letter. My impression was that Mr. Daley also considered what I described to be inappropriate behavior.

- c. *How has Chairman Jaczko's behavior towards the staff chilled or otherwise affected the work environment?*

Answer: The behavior described above does not foster an environment in which employees are comfortable speaking up and sharing concerns and differing views without fear of negative consequences. A report prepared by an external organization evaluating the Office of Nuclear Materials Safety and Safeguards (NMSS) internal safety culture, dated November 7, 2011, describes views expressed by the staff as "quite negative, mostly regarding the perceived impact that the Chairman's actions had on NMSS and the Agency's safety culture." This report also states that "Several members of the Leadership Team expressed an overriding concern that the assessment was focused too narrowly (i.e., NMSS) and should instead be focused farther up the chain of command to include the EDO, the Commission, and the Chairman."

During the December 14, 2011 hearing, the EDO responded in the affirmative when asked if the Chairman had exhibited behavior consistent with the definition that the federal government uses for harassment, intimidation and a hostile work environment.

During that hearing Representative Platts addressed the following question to the EDO: "But do the staff subordinate to you feel comfortable in sharing information with the other commissioners if it's contrary to a view they know that the chairman holds?" The EDO responded that contrary to NRC's long-standing practice, "There is a higher degree of apprehension, though, today under the current environment, as the first panel discussed, that has, at least for me, a concern that there could possibly be some reluctance to provide information as timely and as candidly."

- d. *How does a chilled work environment affect the operations and culture of the NRC?*

Answer: A chilled work environment can inhibit the staff from sending their frank and independent opinions and recommendations to the Commission. A chilled work environment could lead to staff members being afraid to raise issues or delaying the submission of information that they believe goes against the Chairman's policy preferences. It is important for the Commissioners to consider alternative approaches and diverse views. Having all perspectives improves our ability to make the best regulatory decisions. An Open Collaborative Work Environment is, in fact, a key component of the NRC's internal safety culture.

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Commissioner George Apostolakis
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- e. *How would the NRC respond to allegations of harassment, intimidation, or a chilled work environment at an NRC licensee?*

Answer: Acts of harassment, intimidation, or discrimination against an employee, contractor, or subcontractor of a facility licensed by the NRC for raising NRC related safety or regulatory concerns are against the law. The NRC vigorously pursues enforcement action against licensees or licensee contractors who discriminate against their employees for raising nuclear safety concerns, such as imposing a fine, issuing an order modifying an NRC license, or, in criminal cases, referring the case to the U.S. Department of Justice for prosecution.

The NRC encourages the facilities it licenses to establish a work environment in which employees are encouraged and feel free to raise safety concerns without fear of retaliation. As stated in NRC report NUREG/BR-0240, "Reporting Safety Concerns to the NRC: Licensee Responsibility", "Workers who raise safety concerns serve a vital role in the protection of public health and safety. Retaliation against those who do so is unlawful and will not be tolerated by the NRC."

5. *In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "ordered staff to withhold or modify policy information and recommendations intended for transmission to the Commission."*

What specific incident or incidents prompted you to include this language in your letter to the White House?

Answer: As Mr. Borchardt confirmed in his response to a question during the December 14, 2011 hearing, "there have been papers and some budget submissions that have been altered at the Chairman's direction." Timing of the submission of papers has also been an issue. An example is the staff's preparation of a policy paper for the Commission outlining potential alternatives relating to the process for issuing a combined license (COL). I learned during a periodic meeting with the Office Director that the Chairman had ordered the staff to change their recommendation and present the Chairman's policy preference as the staff's recommendation.

The staff prepared a policy paper to provide the Fukushima Task Force report that conformed to the standard format and substance of policy papers, including staff analysis and recommendations. An advanced copy of this paper was distributed to the Commission on July 12, 2011. Shortly after receiving the advanced copy, the Chairman called to explain that he was pulling the advanced copy because the paper needed to be corrected. The new document that was provided to the Commission for a vote was simply a two-paragraph paper transmitting the task force report and did not include the staff's recommendations.

6. *In the October 13, 2011 letter to the White house, you and your colleagues stated that Chairman Jaczko: "interacted with us, his fellow Commissioners, with such intemperance and disrespect that the Commission no longer functions as effectively as it should."*

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Commissioner George Apostolakis
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Hearing on "The Leadership of the Nuclear Regulatory Commission"

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

Answer: Please refer to answer to Question 3.

7. *In the October 13, 2011 letter to the White House, you and your colleagues stated: "Chairman Jaczko's behavior and management practices have become increasingly problematic and erratic."*

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

Answer: The Chairman did not attend the second half of the Japan Task Force meeting held on October 11, 2011, the most important matter of the agency at that time. He learned during the break that the majority of the Commissioners opposed his request to remove the EDO. In addition, the Chairman threatened to cancel the Vogtle mandatory hearing and delayed issuance of the agenda, creating a significant burden to the participants, because he disagreed with the decision of the majority of the Commissioners on how to structure the hearing. Please also see the answer to Question 6 above.

8. *On December 12, 2011, the White House sent a letter to Chairman Issa regarding the management issues at the NRC. In the letter, the White House stated that the "present tensions appear to be rooted in the very structure of the NRC and in disagreements over policy matters."*

Do you agree with the White House's assessment? Why or why not?

Answer: The present situation is not the result of the structure of the NRC or disagreements over policy.

9. *In his December 7, 2011 letter to the White House, Chairman Jaczko suggested that your concerns about the Commission's ability to function effectively are not rooted in policy differences but arise "from the lack of understanding the current Commissioners have of their statutory roles at the agency."*

- a. *Do you agree with the Chairman's assertion that you and your colleagues lack an understanding of your statutory role at the agency?*

Answer: No, I do not.

- b. *How does your interpretation of your role at the agency differ from that of previous Commissioners? Have you sought advice from other current or former Commissioners on your role at the NRC?*

Answer: I am not aware that my interpretation of my role differs from that of previous Commissioners. Reports about past Commissions, as well as my own observations, lead me to conclude that my interpretation of a Commissioner's role is consistent with that of former Commissioners. I have not sought advice from other Commissioners on this subject.

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Commissioner George Apostolakis
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- c. *Based on your understanding of previous Commissions, does the current Chairman's interpretation of his role and responsibilities differ significantly from his predecessors?*

Answer: I have limited first-hand experience with previous Chairmen.

The Chairman also noted "this is not the first time that confusion over differences between the roles and responsibilities of the NRC Chairman and Commissioners has caused communication problems[.]" citing a 1999 report by the Office of the Inspector General.

In 1998, disagreements with then-Chairman Shirley Anne Jackson over her interpretation of authority prompted the Commission to revise the Internal Commission Procedures in an effort to clarify the roles and responsibilities of the Commission.

In his January 2000 response to the 1999 IG report, Chairman Richard Meserve noted "[a]lthough the report raises questions about how the Commission interacts, it fails to recognize that in 1998 the Commission undertook a review of its internal procedures."

- d. *Have the revisions to the Internal Commission Procedures approved by the current Commission resolved disagreements or confusion over roles and responsibilities with Chairman Jaczko? Why or why not?*

Answer: The revisions have not resolved entirely some disagreements over roles and responsibilities of the Chairman. The Chairman takes a broad view of administrative and other executive and managerial responsibilities.

- e. *What steps are necessary to avoid future disagreements over roles and responsibilities?*

Answer: The principal step is for the Chairman to heed the messages in the Commissioner's memorandum and the letter to former Chief of Staff Daley.

- f. *Do you believe there are legislative changes necessary to clarify the Chairman's and the Commissioners' respective roles and responsibilities?*

Answer: Legislative changes should not be necessary. Fundamental direction and relevant interpretations are already reflected in the statutes and legislative histories. An example concerns the ultimate authority of the Commission. Although the Commission is not expected to involve itself in purely administrative or managerial functions, Section 1(a) of Reorganization Plan No. 1 of 1980 provides that the Commission may determine by majority vote, in an area of doubt, whether any matter, action, question or area of inquiry pertains to the Commission's functions in the areas of policy formulation, rulemaking, and orders and adjudications. As explained in the legislative history, the Plan "reaffirms the ultimate authority of the Commission over the affairs of the agency by requiring that the Chairman and the EDO be governed by the policies of the Commission, and by such regulatory decisions, findings and determinations as the Commission is authorized to make. The Committee also intends the Commission to exercise the authority to interpret the Plan." Senate Report 96-790 at 4.

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Commissioner George Apostolakis
U.S. Nuclear Regulatory Commission
Responses to Questions for the Record from Chairman Darrell Issa
Committee on Oversight and Government Reform

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Hearing on "The Leadership of the Nuclear Regulatory Commission"

10. Prior to his December 7, 2011 letter to the White House, did you or your staff receive any reaction or feedback from Chairman Jaczko or his staff in response to the October 13, 2011 letters signed by you and your colleagues? Please explain your response and provide any specific examples.

Answer: No, with the exception that the Chairman said that he had received our memorandum and letter, and the Chairman's former Chief of Staff asked my Chief of Staff: What did you think you were going to accomplish by sending this letter?

11. Following his December 7, 2011 letter to the White House, has the Chairman taken steps to address the concerns raised by you and your colleagues? Please explain your response and provide any specific example.

Answer: The Chairman met with me privately and acknowledged that he had intervened in the staff's preparation of a COL staff paper to the Commission (see answer to Question 5) and that sometimes he gets "intense". His interaction with me since then has not involved intemperate or inappropriate behavior. He also suggested that he and I have dinner with our spouses and we did so on January 22, 2012.

12. What specific actions do you believe are necessary to restore internal and external confidence in the management and operations of the NRC?

Answer: Please see my answer to Question 1.b.

13. Please respond to recent allegations that you and your colleagues obstruct the NRC's mission of protecting public health and safety.

Answer: As I have stated in prior testimony, I find it deeply offensive that ill motives are ascribed to me with regard to the implementation of lessons learned from the Fukushima accident or other safety matters. For example, the Commission has acted methodically and expeditiously in response to the Fukushima accident. Decisions on nuclear safety matters should not be made without careful deliberation because they are technically complex. This is one of the reasons that there is an independent five-member Commission. Such deliberation includes the technical evaluations by NRC senior management, the views of the statutory Advisory Committee on Reactor Safeguards (ACRS), public meetings and inputs from external stakeholders.

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COMMISSIONER

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

February 13, 2012

The Honorable Darrell E. Issa
Chairman, Committee on
Oversight and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Issa:

I appeared before the Committee on Oversight and Government Reform on December 14, 2011, along with my colleagues on the Commission. In response to your letter of January 13, 2012, enclosed please find my response to questions for the record from that hearing. Due to the sensitive nature of the topics discussed in my responses, the Enclosure is marked "Not for Public Disclosure." I respectfully request that the Committee hold the Enclosure in confidence with access limited to Members and Committee staff.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristine L. Svinicki".

Kristine L. Svinicki

Enclosure: As stated

cc: The Honorable Elijah E. Cummings, Ranking Member

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**Questions for Commissioner Kristine L. Svinicki
U.S. Nuclear Regulatory Commission**

**Chairman Darrell Issa
Committee on Oversight and Government Reform**

Hearing on "The Leadership of the Nuclear Regulatory Commission"

1) *On December 12, 2011, the White House responded to the concerns raised in the letter you and your colleagues wrote on October 13, 2011.*

a. *Do you believe the White House provided an adequate response to your concerns?*

The White House Chief of Staff's office promptly acknowledged receipt of the letter and provided me with an opportunity for a meeting with Mr. Daley to discuss its contents. I appreciated these communications but do not agree with the subsequent characterization of the issue as being confined to a disagreement over roles and responsibilities between Chairman Jaczko and other members of the Commission.

b. *In your view, what steps must be taken to improve the current situation at the NRC?*

The current situation will improve when the conduct objected to in the letter of October 13, 2011 ceases.

2) *The Committee understands that Chairman Jaczko sought to remove Executive Director for Operations William Borchardt from his position.*

a. *Did the Chairman provide a clear explanation for his desire to remove Mr. Borchardt?*

Yes, Chairman Jaczko articulated a specific and clear basis for his desire to remove William Borchardt and install a new Executive Director for Operations.

b. *What was your response to the Chairman's attempt to remove Mr. Borchardt?*

I did not support the removal of Mr. Borchardt from his position and articulated to Chairman Jaczko and the other members of the Commission that I was not persuaded that sufficient basis existed to justify his removal.

c. *Do you have any concerns about the Chairman's efforts to remove Mr. Borchardt or how he handled the situation with you and your colleagues?*

Enclosure

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I acknowledge the significant day-to-day working relationship between an NRC Chairman and the NRC's Executive Director for Operations. It is appropriate for a Chairman to share his view on the performance of an incumbent EDO. As a position for which the Commission is the appointing authority, however, removing the EDO would require the approval of a Commission majority.

- d. *To your knowledge, has Mr. Borchardt received a negative performance review in his current role?*

To my knowledge, no, he has not.

- 3) *In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko made comments that reflect his "contempt for the Commission itself and open disdain for the Internal Commission Procedures, a document that embodies governing principles from the NRC's organic legislation."*

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

Based on the Chairman's written responses to the Commission's efforts to revise its Internal Commission Procedures (COMSECY-08-0031), I interpreted by his responses that the Chairman did not intend to be bound by certain provisions of those revised Procedures, despite the fact that they were supported by a majority of the Commission. Additionally, I was informed by a member of the agency's senior staff that at an October 2011 Senior Leadership Meeting, Chairman Jaczko used the Commission's revisions to the Internal Procedures as an example of the Commission over-stepping its statutory authority and inappropriately micro-managing the NRC staff. Senior staff described the contents of Chairman Jaczko's remarks as "an expression of contempt for the Commission."

Another example can be seen through Chairman Jaczko's direction of the Office of Public Affairs (OPA). The Chairman is statutorily responsible to act as the "official spokesman for the Commission", but there have been occasions where OPA's messages to the media and the public did not reflect the Commission's position. For example, the Commission acted on the recommendations of the agency's Near-Term Task Force on lessons learned from the events at Fukushima. In doing so, the Commission directed the NRC Staff to undertake an advanced notice of proposed rulemaking to address the station blackout issue. The Chairman disagreed with this approach, and the press release announcing the Commission's decision was worded as follows:

"The station blackout rulemaking is an achievable goal," said Chairman Jaczko. "It will, however, be complicated by the Commission's direction to initiate the rulemaking through an advance notice of rulemaking, rather than as a proposed rule. This will add an extra step to the process. Nevertheless, addressing station blackout is a high priority, and I will do my best to lead the staff in accomplishing this effort."

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In my opinion, this language did not reflect the Commission's decision, and was an example of the Chairman using his spokesman role to demean publicly the Commission's decision. Also, as I testified to during the hearing, Chairman Jaczko has on occasion refused to send responses to Congressional correspondence which contain language approved by a majority of the Commission.

- 4) *In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "intimidated and bullied senior career staff to the degree that he has created a high level of fear and anxiety resulting in a chilled work environment."*
- a. *What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.*

An example of this type of behavior exhibited by Chairman Jaczko was a situation I learned about through my staff, concerning a purported conversation between the Secretary of the Commission and the Chairman, regarding the scheduling of a Commission meeting. I had proposed that the Commission invite a particular stakeholder to make a presentation at the meeting. In response to my request, the Secretary polled the Commission to determine whether a majority supported my proposal. Chairman Jaczko was reportedly angry with the Secretary's action, and berated her for purportedly exceeding her authority by polling the Commission on matters regarding the invitation of specific presenters at Commission meetings, because he asserted that authority was vested solely in the Chairman. Subsequent to the conversation between the Secretary and Chairman Jaczko, I was informed that the Secretary would not take any further action to come to conclusion on my proposal.

Another incident involved the Secretary of the Commission and her ability to carry out the decision of the Commission majority regarding the scheduling of the mandatory hearing for the Vogtle combined operating license application. A majority of the Commission supported issuance of a scheduling note setting forth the details of the mandatory hearing. The Chairman disagreed with the majority's decision, and instructed the Secretary that she did not have the authority to issue the scheduling note as approved by the majority. My understanding is that, based on that instruction, the Secretary did not believe she could proceed with issuance of the scheduling note, despite the Commission majority's instruction. Although this matter was ultimately resolved and the Commission held the Vogtle mandatory hearing, the objection to carrying out the Commission's direction caused unnecessary delay and impeded the predictability of the agency's first-ever mandatory hearing on a combined license application.

- b. *In discussions with the White House following your October 13, 2011 letter, did you inform them of specific examples of harassment or intimidation? If yes, please explain these examples and any response you received from the White House.*

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As noted in my response to question 1, I was provided an opportunity to discuss the concerns outlined in the October 13, 2011 letter. Those discussions were confined to the matters outlined in the letter.

- c. *How has Chairman Jaczko's behavior towards the staff chilled or otherwise affected the work environment?*

In his December 14, 2011 testimony before this Committee, the NRC's Executive Director for Operations, R. William Borchardt, addressed this issue. In response to a question regarding the NRC Staff's ability to provide information to the Commission in the current environment, Mr. Borchardt replied that the Staff continues its long-standing practice of being responsive to individual Commissioner requests for information. However, he went on to state that "[t]here is a higher degree of apprehension though today under the current environment ... that has, at least for me a concern that there could possibly be some reluctance to provide information as timely and candidly." He noted that "[t]here's a change in ... the historical practice as I understood it through my 28 years at the NRC ... -- if the staff felt that there was information that would be of interest to the commission [] the staff would fault to the side of providing that information in some kind of written document. So the commission could decide whether or not it was of interest to them and whether or not they wanted to adopt [it] as a policy issue for their consideration. Now what's happened more on occasion is that the chairman's office has made a decision as to the timing of when that information would go forward. So that was ... a fairly significant from the staff's perspective change in practice."

- d. *How does a chilled work environment affect the operations and culture of the NRC?*

The NRC's EDO also addressed the topic of NRC values and culture in his December 14, 2011 testimony before the Committee. In response to a question about whether he had been reprimanded by the NRC Chairman for sharing information with other Commission members, he stated, "Well, I would put myself in the same category as a number of the other senior managers within the staff that have, you know, received, you know, a form of verbal direction or verbal counseling that at least in my view was not consistent with the NRC values that we endeavor to perform our own behavior with." Mr. Borchardt went on to state that he would not tolerate that type of conduct from a subordinate, and that "that kind of behavior is inconsistent with what we expect from the staff."

- e. *How would the NRC respond to allegations of harassment, intimidation, or a chilled work environment at an NRC licensee?*

Allegations of these types of behaviors at an NRC licensee would be subject to investigation and potential enforcement action.

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- 5) *In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "ordered staff to withhold or modify policy information and recommendations intended for transmission to the Commission."*

What specific incident or incidents prompted you to include this language in your letter to the White House?

As discussed at the Committee's December 14, 2011 hearing, I do not believe that the Commission has been kept fully and currently informed of information pertaining to the agency's lessons-learned from the events at Fukushima. One particular example is with respect to the NRC Staff's ability to bring forth its independent recommendation on a Commission voting paper regarding the agency's response to the events at Fukushima (SECY-11-0093). Based on information provided by senior agency staff, my understanding is that the NRC Staff's original recommendation contained in that paper was removed at the direction of Chairman Jaczko. Any practice whereby the Staff is hindered from providing the Commission with its independent advice and recommendations effectively curtails the Commission's access to full and timely information.

Another example is with respect to the Chairman's unilateral shut-down of the technical review for the Yucca Mountain repository license application. As the Inspector General documented in his June 6, 2011 report (OIG Case No. 11-05), the EDO stated that he inquired of the Chairman whether the other Commissioners supported the Chairman's continuing resolution (CR) budget guidance memorandum that would close out the license application review process. The EDO told OIG that the Chairman told him "that all four Commissioners were in agreement with the memorandum's language, understood that they were going to close out the High-Level Waste Program, and authorized the issuance of the CR budget guidance memorandum." However, the Inspector General found that the Chairman "strategically provided three of the four other Commissioners with varying amounts of information about his intention to proceed to closure" and that "[the Chairman] did not provide Commissioner Svinicki with any information about his intentions."

Perhaps most significantly, when discussing the Chairman's remarks to the senior staff at the October 5, 2011 Senior Leadership Meeting, the EDO described them to me by saying, "We were pretty much instructed to leave our brains at home." Hearing this characterization was yet another factor causing me to question whether the NRC staff is operating in an environment which fosters the staff providing the Commission unadulterated and independent advice.

In addition to these examples, the Inspector General's June 6, 2011 report found that Chairman Jaczko controls information provided to other Commissioners based on his interpretation of his statutory authority. OIG found that because Chairman Jaczko "acts as the gatekeeper to determine what is a policy matter versus an administrative matter, and manages and controls information available to the other Commissioners, they are uncertain as to whether they are adequately informed of policy matters that should be brought to their attention."

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- 6) *In the October 13, 2011 letter to the White House, you and your colleagues stated that Chairman Jaczko: "interacted with us, his fellow Commissioners, with such intemperance and disrespect that the Commission no longer functions as effectively as it should."*

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

One example of the Chairman's behavior occurred in December 2009, when the Commission voted on the NRC appeal to the Office of Management and Budget (OMB) FY 2011 budget passback (COMSECY-09-0027). All three then-serving Commissioners (Chairman Jaczko, Commissioner Klein, and I) approved the proposed letter to OMB, subject to individual edits. The draft Staff Requirements Memorandum (SRM) was circulated for Commission approval on the day that the appeal was due to OMB. Shortly after the draft SRM was circulated, I received a phone call from Chairman Jaczko on the matter. Chairman Jaczko told me that he was leaving the building in eight minutes, and that if I did not retract my vote edits before then, he would leave the building and not submit any reclama on behalf of the agency. Chairman Jaczko said that he would not appeal OMB's passback, and that the agency would just have to absorb the reduction. Given this ultimatum, I agreed to support the reclama subject to the edits of Commissioner Klein, which were similar to mine. That Chairman Jaczko would present such an ultimatum demonstrated to me his lack of respect for the Commission majority and the underlying voting process.

A more recent example that I witnessed first-hand occurred during a meeting of the Commission on July 18, 2011 to discuss the Commission's upcoming agenda. During this meeting, the Commission discussed the Chairman's proposed "road-map" for proceeding with the Fukushima lessons-learned effort. During an exchange between Chairman Jaczko and Commissioner Ostendorff, in which Commissioner Ostendorff asked questions about the Chairman's proposal and offered suggestions on the road-map, Chairman Jaczko became agitated and gaveled the Commission meeting to a close as Commissioner Ostendorff was speaking. He said "we're done," and walked out before Commissioner Ostendorff or any other member of the Commission could respond. Notwithstanding the Commission's lack of support for his roadmap, Chairman Jaczko proceeded from this meeting to an event at the National Press Club to announce publicly his plan to move forward with the roadmap.

- 7) *In the October 13, 2011 letter to the White House, you and your colleagues stated: "Chairman Jaczko's behavior and management practices have become increasingly problematic and erratic."*

What prompted you to include this specific language in your letter to the White House? Please provide any specific examples that demonstrate the behavior you described.

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The examples provided in response to question 6 are also responsive to this question. An additional example of Chairman Jaczko's erratic behavior occurred during the October 11, 2011 Commission meeting on the Japan Near-Term Task Force Report prioritization and recommendations. This was a two-part meeting, with one session held in the morning and one held in the afternoon. Chairman Jaczko attended the morning session, but did not preside over or attend the afternoon session. I found his absence highly unusual, particularly for a meeting on such an important topic. Later, I learned from a fellow Commissioner that the Chairman refused to attend the afternoon portion of that meeting because he had learned that the Commission would not support his effort to remove the EDO.

- 8) *On December 12, 2011, the White House sent a letter to Chairman Issa regarding the management issues at the NRC. In the letter, the White House stated that the "present tensions appear to be rooted in the very structure of the NRC and in disagreements over policy matters."*

Do you agree with the White House's assessment? Why or why not?

Respectfully, I do not agree that the current environment at the Commission is rooted in the structure of the NRC or in disagreements over policy matters. I believe that the Commission structure has served the agency well over its history, and that previous Commissions have functioned successfully under this structure. I also believe that the present tensions extend well beyond differences on policy matters, because substantive disagreements on policy matters routinely exist in Commission bodies (and are even to be expected), yet do not impede those bodies' core functioning. I believe that the current tensions at the Commission are rooted more fundamentally in Chairman Jaczko's interpretation of his statutory authority, as well as conduct toward his Commission colleagues and the NRC Staff. Policy differences with Chairman Jaczko did not motivate me to sign the October 13, 2011 letter to Mr. Daley.

- 9) *In his December 7, 2011 letter to the White House, Chairman Jaczko suggested that your concerns about the Commission's ability to function effectively are not rooted in policy differences but arise "from the lack of understanding the current Commissioners have of their statutory roles at the agency."*
- a. *Do you agree with the Chairman's assertion that you and your colleagues lack an understanding of your statutory role at the agency?*
- No, I do not.
- b. *How does your interpretation of your role at the agency differ from that of previous Commissioners? Have you sought advice from other current or former Commissioners on your role at the NRC?*

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I have had occasion to question the Chairman's understanding of his statutory role at the agency. For example, the "Facts About Issues Raised in October 13, 2011 Letter" document released in connection with Chairman Jaczko's December 7, 2011 letter to Mr. Daley states that "*The senior managers report to the Chairman and he is responsible for the day-to-day management of the agency.*" (Emphasis added.) It is true that by statute, the EDO reports for all matters to the Chairman. In contrast, Reorganization Plan No. 1 of 1980, Sec. 4(d) states that "The heads of the Commission level offices ... shall continue to report directly to the Commission and the Commission shall continue to receive such reports." Clearly, then, contrary to his assertion, not all senior managers report to the Chairman.

I joined the Commission in 2008 under then Chairman Dale Klein and while Commissioner Peter Lyons was also serving on the Commission. The collegial practices and modes of operating between Chairman Klein and the Commission at that time differed markedly from the current state.

- c. *Based on your understanding of previous Commissions, does the current Chairman's interpretation of his role and responsibilities differ significantly from his predecessors?*

Yes. I believe that Chairman Jaczko's interpretations represent the far extreme of possible statutory interpretation, to the point of jeopardizing the viability of a functioning Commission structure at NRC.

The Chairman also noted "this is not the first time that confusion over differences between the roles and responsibilities of the NRC Chairman and Commissioners has caused communication problems [,]" citing a 1999 report by the Office of the Inspector General.

In 1998, disagreements with then-Chairman Shirley Anne Jackson over her interpretation of authority prompted the Commission to revise the Internal Commission Procedures in an effort to clarify the roles and responsibilities of the Commission.

In his January 2000 response to the 1999 IG report, Chairman Richard Meserve noted "[a]lthough the report raises questions about how the Commission interacts, it fails to recognize that in 1998 the Commission undertook a review of its internal procedures."

- d. *Have the revisions to the Internal Commission Procedures approved by the current Commission resolved disagreements or confusion over roles and responsibilities with Chairman Jaczko? Why or why not?*

I disagree with the premise that there has been "confusion" over the roles and responsibilities of the Commission versus the Chairman. However, I do believe that there have been and continue to be disagreements over these roles and responsibilities. A functional, collegial Commission is vital to ensuring that the agency carries out its mission of protecting public health and safety. Although some degree of natural tension is to be expected in the interpretation of the

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Chairman's statutory authorities versus those of the Commission, this tension must not obstruct the functioning of key processes. Although the latest revisions to the Internal Commission Procedures added much-needed clarity to many of our internal processes, I do not believe that they have resolved fundamental differences in statutory interpretation of the Chairman's authorities versus those of the Commission. The Internal Commission Procedures are grounded in the agency's organic statutes, and to the extent that there are disagreements in interpretations of those statutes, even the clarified Internal Procedures will not be able to resolve them. Moreover, Chairman Jaczko has communicated to the Commission that he would consider some provisions of the revised Internal Procedures merely "advisory", because he does not believe that they are authorized by law.

- e. *What steps are necessary to avoid future disagreements over roles and responsibilities?*

In my view, disagreements over roles and responsibilities will continue to exist.

- f. *Do you believe there are legislative changes necessary to clarify the Chairman's and the Commissioners' respective roles and responsibilities?*

I defer to the Committee to determine whether legislative changes are necessary and appropriate to clarify the Chairman's and the Commissioners' respective roles and responsibilities, based upon the Committee's review of the testimony that has been provided and the Committee's determination of whether the Commission's current modes of operating are consistent with Congressional intent.

- 10) *Prior to his December 7, 2011 letter to the White House, did you or your staff receive any reaction or feedback from Chairman Jaczko or his staff in response to the October 13, 2011 letters signed by you and your colleagues? Please explain your response and provide any specific examples.*

No. Prior to Chairman Jaczko's December 7, 2011 letter to the White House, neither I nor my staff received any reaction from Chairman Jaczko or his staff in response to the October 13 letter.

- 11) *Following his December 7, 2011 letter to the White House, has the Chairman taken steps to address the concerns raised by you and your colleagues? Please explain your response and provide any specific examples.*

Subsequent to his December 7, 2011 letter, Chairman Jaczko and I briefly discussed the two December Congressional hearings and the testimony provided there. We communicated our respective commitment to working together, in spite of our disagreements on these matters, to further the important work of the NRC.

- 12) *What specific actions do you believe are necessary to restore internal and external confidence in the management and operations of the NRC?*

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I believe that rebuilding a relationship of trust between Chairman Jaczko and the Commission will be essential to restoring confidence in the management of the NRC. I pledge myself to this effort.

13) Please respond to recent allegations that you and your colleagues obstruct the NRC's mission of protecting public health and safety.

As I stated before the Committee on December 14, 2011, my sole motivation in serving on the Commission is to advance nuclear safety and security for the American people. That my colleagues and I may disagree on policy matters is not a basis to question any Commissioner's commitment to protecting public health and safety.

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