

**REVIEW OF THE NRC'S NEAR-TERM TASK FORCE
RECOMMENDATIONS FOR ENHANCING REAC-
TOR SAFETY IN THE 21ST CENTURY**

JOINT HEARING
BEFORE THE
SUBCOMMITTEE ON CLEAN AIR
AND NUCLEAR SAFETY
AND THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION

DECEMBER 15, 2011

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FIRST SESSION

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**REVIEW OF THE NRC'S NEAR-TERM TASK
FORCE RECOMMENDATIONS FOR ENHANC-
ING REACTOR SAFETY IN THE 21ST CEN-
TURY**

THURSDAY, DECEMBER 15, 2011

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY,
Washington, DC.

The Committees met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Office Building, Hon. Barbara Boxer (Chairman of the full Committee) presiding.

Present: Senators Boxer, Inhofe, Carper, Lautenberg, Sanders, Udall, Vitter, Barrasso, Sessions, Crapo, Alexander, and Boozman.

**OPENING STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator BOXER. The Committee will come to order. Let me start off by saying Happy Holidays to everybody, Merry Christmas, Happy Hanukkah, whatever is your preference. We welcome you all here.

Senator INHOFE. Does that mean we will be home for Christmas?

Senator BOXER. If I had anything to say about it, absolutely. Absolutely.

It is the responsibility of the Environment and Public Works Committee to conduct oversight of the Nuclear Regulatory Commission, the NRC, and to ensure that the nuclear industry maintains the highest level of safety for the American people. Let me start, as I often do, by reading NRC's mission statement. The mission of the NRC is to license and to regulate the nation's civilian use of byproduct, source, and special nuclear materials in order to protect public health and safety, promote the common defense and security, and protect the environment.

Today is the fifth time the members of this Committee have gathered in this room to discuss nuclear safety following the Fukushima crisis in Japan in March. At each of those meetings, I have repeatedly asked the NRC to heed the wake-up call from Fukushima, to reevaluate the safety and security of nuclear plants in the United States, and to implement the recommendations of the Near-Term Task Force as soon as possible.

In fact, at our last NRC hearing on August 2nd, four of you made the commitment to me and to this Committee that you would move forward on some or all of the Near-Term Task Force recommenda-

tions within 90 days. To my great disappointment, that has not happened. Although Chairman Jaczko repeatedly asked you to keep your commitment to move expeditiously on safety, you are more than a month overdue on that commitment. It doesn't appear to me that such action is set to occur any time soon, and I am hopeful maybe the Commission, all of you, especially the Chairman, could tell me if I am wrong on that. I would hope there is a date to act on those recommendations.

Colleagues, less than a week after the Task Force delivered its report to the NRC, Chairman Jaczko laid out a road map to address the lessons learned from Fukushima. And he set a deadline of October 21st for action on those recommendations. He was proactive, because without a specific time table for these common sense safety measures, the NRC will not live up to its mandate, as we just saw, to require nuclear power plants to be safe and reliable.

But instead of taking action, every Commissioner, except Chairman Jaczko, focused on delay in the form of a re-review. Guess what the result was? That re-review came to the same conclusions as the first review. So here we are on December 15th, and not one of those safety recommendations has been accepted and acted on. It is simply inexcusable. Slow walking needed reforms after a disaster like Fukushima, where widespread contamination has set back Japan immeasurably, must not be an option.

Yesterday, instead of focusing on nuclear plant safety, a House committee conducted what I consider to be a witch hunt in an attempt to assassinate the character of a dedicated public servant. Frankly, I was shocked, and I was appalled. One of you Commissioners even said in written testimony that the Chairman was abusive to women.

I asked my staff to check out this accusation. And let me tell you what they found. They found the opposite. In fact, that the Chairman, according to one respected female staffer, was, quoting her directly, the most fair person she has ever met. She went on to say, "He treats everyone equally." Other comments include: "He invites people to dissent, and I have never seen him mistreat others." One woman said, "What I am floored by is the conduct of the other Commissioners."

Our nation is fortunate to have Greg sitting in the Chairman's seat, because he is a proven leader. I believe that without his leadership on the Commission, the NRC might never have implemented the important safety recommendations made at the 9/11 terrorist attacks. It took 10 years. But it was the Chairman that made it happen finally.

The NRC must focus on safety, and it must take action without delay if nuclear power is to maintain the public trust. I want to show you part of a New York Times editorial from July 23rd. "If nuclear power," they write, "is to have a future in this country, Americans have to have confidence that regulators and the industry are learning the lessons of Fukushima and taking all steps necessary to ensure safety." The American people's faith in nuclear power was shaken by the Fukushima crisis. No matter what we may think, the polls show that their confidence was shaken. And the American public rightly expects the NRC to redouble its efforts

to ensure that our nuclear plants are the safest in the world. But that has not happened.

And let me tell you what happens when people lose confidence in the NRC and the nuclear industry. Right now, there is a petition circulating in my State for a ballot initiative which would effectively shut down the two nuclear plants we have in California. You know all about those plants, because I have questioned you about them. As a matter of fact, I met one of the Commissioners there, and we went—we investigated. There is a lot of concern. In one case, tens of millions of people live within 50 miles. I shouldn't say tens of millions, how many is it? I am sorry, 7.4 million live within 50 miles of one of those plants, and the other one is about half a million people.

So here is what happens. If the NRC doesn't do its job, if the American people feel that they are not being protected, if the American people feel that all this is about is some battle as to who should be the Chairman and who is going to score political points, and you are distracted from what you have to do, you are going to see more of these moves across the country. And that would be very, very sad, because there are many old nuclear power plants that have similar characteristics as Fukushima.

So I speak to you right from the heart like I did the last time when I say, can't you stop this battling and talk to each other like human beings? What happened yesterday was a horrible setback, but it is not too late to recover from that. We should be focusing on the work that you have to do, not petty politics and personal ambition.

So I hope going forward you will focus on safety. We will focus on safety. And stay away from the politics of personal destruction.

I am happy to call on Senator Inhofe.

**OPENING STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Well, Madam Chairman, I would almost use some of the same words you used when you say you were shocked and appalled at the apparent character assassination of one person. But I am appalled at the attempted assassination of the character of four people, four public servants.

I remember in 1996, I chaired the Subcommittee. At that time we had gone several years without any oversight. We totally changed it. It has been doing very well since then. I was very proud of it.

I have to say that I am just blown away by the numerous reports, and I say reports, of Chairman Jaczko's intimidation and retaliation against senior staff, agency staff, in attempts to fundamentally undermine the collegial function of the Commission, and to perhaps, allegedly, for his own objectives in his efforts to withhold information from his fellow Commissioners.

Now, what surprises me is that the White House appears to condone this behavior, dismissing it as management differences. Well, the management differences that we have here are serious. We have one Chairman who believes that bullying staff is acceptable in an effort to further his own agenda and four Commissioners who disagree. In 2006 the late Commissioner Ed McGaffigan—and I

think everyone remembers him, he is one who has been held in such high esteem, we lost him, unfortunately. But he made a statement, it was actually a speech to the NRC employees. I think it is appropriate to read that speech.

He said, “You come to an institution, the NRC, that is routinely subject to baseless attacks by groups opposed to nuclear power, that call themselves nuclear watchdogs. These groups need to demonize the NRC, you and me, to fund themselves and their anti-nuclear agenda. When I arrived at NRC in 1996, I had spent two decades working on national security issues first as a foreign service officer then as an aide to Senator Jeff Bingaman. I did not know that I was a demon, but it didn’t take long for me to cast votes based on my scientific, technical, and policy judgment that we were not to the liking of the anti-nuclear zealots. And so I became a demon.”

He went on to say—this incidentally, Madam Chairman, is the same year that I became Chairman of this Subcommittee, but anyway, he went on to say, and I am still quoting from his speech to his employees, “Honor often involves telling people, perhaps colleagues, perhaps supervisors, what they don’t want to hear. And it may make you enemies, but stories I could tell you from my own career would persuade you that you can afford such enemies, but you cannot afford to compromise your honor and your personal compass.” I think it is appropriate that we re-read his statement, probably the guy who has been held in the highest regard of any, certainly during the years I have been here.

What we saw this weekend was an immediate, concerted, and very public attempt to demonize four public servants, whose only crime was to conduct themselves with honor, to seek assistance as a last resort from the White House to address problems they have not been able to resolve on their own and risking their professional reputations, they came forward, on behalf of the employees who now work in a hostile environment, employees who are forced to choose between what they believe is right and what Chairman Jaczko wants them to do. Chairman Jaczko’s actions simply can’t be ignored.

However, the White House appears willing to ignore the warning of four Commissioners, resting on their statements that his actions haven’t impaired the Commission’s ability to execute its mission to protect public health and safety. Yet is the President waiting to act until this happens? After all that we have learned how can President Obama still believe that Mr. Jaczko remains the single best possible person to serve in this post? I don’t know what will have to happen to change his mind.

Thank you.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA

Thank you, Chairman Boxer, for holding this hearing. Nuclear safety has historically been a bipartisan issue, and I believe the agency and the public are best served when that is the case. I believe events over the last week have once again shown that nuclear safety is bipartisan: in this case two Democrats and two Republicans.

I am dismayed by the numerous reports of Chairman Jaczko’s intimidation and retaliation against senior agency staff, attempts to fundamentally undermine the

collegial function of the Commission to forward his own objectives, and his efforts to withhold information from his fellow Commissioners. However, I must say I am not surprised, given what I have learned through previous oversight hearings.

What does surprise me is that the White House appears to condone such behavior, dismissing it as mere “management differences.” Well, the “management differences” we have here are serious: we have one Chairman who believes that bullying staff is acceptable in an effort to further his own agenda and four Commissioners who disagree.

In 2006 the late Commissioner Ed McGaffigan, well known and admired by members of this Committee on both sides of the aisle, gave a speech to NRC employees about the importance of speaking the truth to those in power. Here is what he said:

“You come to an institution, NRC, that is routinely subject to baseless attacks by groups opposed to nuclear power that call themselves ‘nuclear watchdogs.’ These groups need to demonize NRC—you and me—to fund themselves and their anti-nuclear agenda. When I arrived at NRC in 1996, I had spent two decades working on national security issues first as a Foreign Service Officer, and then as an aide to Senator Jeff Bingaman (D-NM). I did not know that I was a demon, but it did not take long for me to cast votes, based on my scientific, technical, and policy judgment, that were not to the liking of the anti-nuclear zealots, and so I became a demon.”

He went on to say:

“‘Honor’ often involves telling people—perhaps colleagues, perhaps supervisors—what they do not want to hear . . . And it may make you enemies. But stories I could tell you from my own career would persuade you that you can afford such enemies, but you cannot afford to compromise your honor, your personal compass.”

What we saw this weekend was an immediate, concerted, and very public attempt to demonize four public servants whose only crime is to conduct themselves with honor; to seek assistance, as a last resort, from the White House to address problems they had not been able to resolve on their own. Risking their professional reputations, they came forward on behalf of the employees who now work in a hostile environment, employees who are forced to choose between what they believe is right and what Chairman Jaczko wants them to do.

Chairman Jaczko’s actions simply can’t be ignored. However, the White House appears willing to ignore the warning of four Commissioners, resting on their statements that his actions haven’t impaired the Commission’s ability to execute its mission to protect public health and safety—yet. Is the President waiting to act until it does? After all that we’ve learned, how can President Obama still believe that Mr. Jaczko remains the single best possible person to serve in this post? What will it take for him to change his mind?

Senator BOXER. Thank you.

Senator Carper is going to pass at this time, and we will ask Senator Sanders for his statement.

**OPENING STATEMENT OF HON. BERNARD SANDERS,
U.S. SENATOR FROM THE STATE OF VERMONT**

Senator SANDERS. Thank you, Madam Chair.

I think many of us are not happy about what we are reading in terms of what is going on with the NRC, because your job is an enormously important job, and that is to protect the safety of the American people in our nuclear power plants. That is an enormous responsibility, given what we have seen recently in Japan.

Clearly, the NRC has to be vigilant and rigorous in enforcing a safety regime that gives the American people confidence. And I will tell you, in my State, we have the same model nuclear reactor that melted down in Japan. And in my State, the people are not comforted. And they want to know that the NRC is doing everything it can to protect the safety of the American people.

Now, the media has been reporting that we have a major personality conflict on the Commission. I don’t know if that is true or not. But I suspect that there is more going on here, other than personality conflicts. The media has also, at least some of the media, has

characterized, Madam Chair, what is going on as a “coup” attempted by several Commissioners to remove a Chairman, Mr. Jaczko, who in fact has been pushing for safety reform.

I think what we may have here is a situation where some Commissioners did not understand the function of the Chairman and where some Commissioners have a philosophical disagreement with the Chairman on safety and transparency. But Madam Chair, what I hope we will look at today is go beyond personality conflicts and maybe understand some of the votes that have taken place, and in fact, why we don't know some of the votes, because there is a lack of transparency at the NRC.

On the point of administration of the Commission, it appears that the other Commissioners are upset about Chairman Jaczko's management. But as White House Chief of Staff Bill Daley has noted, and this is an important point, Congress has structured the NRC to have a strong Chairman. And this has produced conflicts between the Chair and Commissioners dating back to 1999, long before Mr. Jaczko was Chairman.

Madam Chair, I will tell you, when I was mayor of the city of Burlington, we used to have conflicts. I was the mayor, we had commissioners. And there was a disagreement about who had responsibility for what. But I think the record is pretty clear, the rules in terms of the NRC are clear and have been changed over the years to create a strong Chairman for the NRC. I think there may be some confusion about that, because I think we all know, President Carter submitted a reorganization plan to Congress in 1980, following Three Mile Island, which clearly states, “The plan clarifies the duties of the Chairman as principal executive officer. In addition to directing the day to day operations of the agency, the Chairman will take charge of the Commission's response to nuclear emergencies.”

On the issue of transparency, Madam Chair, three Commissioners were confirmed by this Committee last year. When they were confirmed, they told this Committee that they supported the Chairman's proposal to open up the NRC voting process to more transparency. Today, each NRC commissioner votes, as I understand it, by writing his or her own opinion behind closed doors, obscuring the process from public view, and making it difficult to know how a result is reached. In addition, it takes weeks, sometimes a month, after a vote is initiated for the public to learn the results.

As far as I am aware, no progress has been made toward a more open and transparent public meeting process. Perhaps this is part of a philosophical difference. If so, we need to get into this issue of transparency and find out why some Commissioners oppose more openness.

I can remember on a personal level, for the State of Vermont, a number of months ago, Vermont is right now engaged in a legal dispute in the courts with Entergy, a large energy company. And I asked the Commissioners to tell me, I had understood that there was a vote, that it was a 3 to 2 vote, where the NRC had urged—in my view, absolutely inappropriately—the Department of Justice to intervene. And I asked, tell me, how did you vote? I did not get

a clear answer. The people of Vermont want to know; did you vote for Entergy, did you not?

I think in general we need more transparency. My understanding is that Chairman Jaczko is fighting for transparency. And some of you are not. That is not a personality difference, that is a philosophical difference, that is a political difference.

On the primary issue, the NRC should be concerned with safety. We are approaching the 1-year anniversary of Fukushima in March. In the United States, we have 23 nuclear reactors with the same design as the plant that experienced at least a partial meltdown in Japan, including one in my own State, same model as Fukushima. Yet the NRC has not yet acted to implement all 12 recommendations made by the task force of senior NRC staff to reform safety at U.S. plants. The Chairman has made very clear that he is ready to move on all 12 recommendations, but not all Commissioners, as I understand it, agree.

The Union of Concerned Scientists points out that 48 reactors still do not comply with fire safety rules established in 1980 and amended in 2004, to ensure that fires do not threaten backup power systems that could prevent a meltdown in an emergency. Yet, Madam Chair, we have four Commissioners who, against the Chairman's vote, voted to approve a delay for compliance through 2014. That is not a personality difference. That is a point of view in terms of whether you are going to be aggressive, in my view, on safety or you are not. There was one person voting for that, it was Mr. Jaczko, four against it. Not a personality conflict, Madam Chair, a difference about what the function of the NRC is.

Let me conclude by saying that these are just two of many instances I am aware of where Chairman Jaczko has been in the lone vote, or in the minority voting for stronger safety measures. So I hope that the debate today is not about personality. All of us want safety. Who is fighting for safety, who is not fighting for safety? This means that there is in fact a philosophical divide on the Commission, and that is OK. It does not mean that the Commission does not function. But we need to get to the bottom of what that divide is.

Yet today, just as some of his fellow Commissioners apparently desire, instead of talking about safety, we are here talking about personality conflicts. I call on all members of the Commission to get back to doing their jobs, and their job is to protect the safety of our nuclear power plants and the well-being of the people of this country.

Thank you, Madam Chair.

Senator BOXER. Thank you very much.

According to arrival, next would be Senator Alexander.

**OPENING STATEMENT OF HON. LAMAR ALEXANDER,
U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator ALEXANDER. Thanks, Madam Chairman, and to the members of the Commission, welcome.

I remember the hearing for three new members of the Commission, three appointees of President Obama and how pleased I was with the President's appointments. Two were Democrats, one is a Republican, three of them sitting here, one a distinguished pro-

fessor at MIT, one a person with broad experience as having actually operated reactors for the Navy, one with broad experience within the Energy Department. And it is not always that Republican and Democratic Presidents appoint such well-qualified people to positions. So I was very pleased by the President's appointments.

In the same way, I am extremely troubled by this extraordinary action of having four of the five members of the Commission actually write a letter to the Chief of Staff of the White House saying that the Chairman has undermined the ability of the Commission to function as prescribed by law and they are concerned about the health and safety and security of the American people. Some Senators have said we should be talking about safety, that is what this letter says. So they are concerned about safety.

And in my experience in public life, which goes back 40 years, I have never seen anything like this before. I have never seen four well-respected members of a commission take it upon themselves to go to the White House, to the President with these kinds of concerns about the Chairman. Now, I know the Chairman very well, he has gone to Tennessee, and he has looked at our reactors in the TVA region. And I greatly appreciate that, and those have been good visits, and I have welcomed visits in my office.

But I am deeply disturbed by this, and I don't know all the answers. But I do know that we have a lot of work to do in the Nuclear Regulatory Commission. I was just making a short list, TVA is trying to restart the nuclear industry in Tennessee using reactors. Commissioner Jaczko, Commissioner Ostendorff have both been there to look at the reactors, make sure they are safe, to see what is going on. We appreciate that.

In Georgia and South Carolina, new reactors are being built. There are two new designs pending before the Commission. I am hopeful that small modular reactors may be coming along in our country. We have 104 reactors operating every day, providing 20 percent of all of our electricity, 70 percent of our clean electricity. We are trying to learn the lessons of Fukushima, which are pretty simple, really, what happened in Fukushima was a huge cyclone, hurricane, tidal wave. And the electricity that brings water to cool the rods didn't work. That was the problem.

And the NRC is working on ways to fix it. And already, as we have said many, many times, the gold standard for safety in the world for nuclear power is in the United States of America. There has never been, never been a death at a civilian nuclear reactor, and no one was even hurt at Three Mile Island.

So I am very disturbed. And I am particularly disturbed because—and I would like to hear today what is going on. What is going on? I would like to get back to the issues.

Of course the Chairman has more responsibility during an emergency. That is in the law. But here is also what the law says: "Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all of the decisions and actions of the Commission, and shall have full access to all information. The Chairman cannot withhold or delay providing information."

That is in the law. And it is important to know whether these distinguished members of the Commission feel that they can't do

their jobs because they are not having equal access to information. Somebody is right here, and somebody is wrong. And we shouldn't just be sloughing it off as a personality disorder. We should ask the Commissioners if they can resolve it themselves, that would be best. But apparently four of them, three appointed by President Obama, all of whom have distinguished reputations, have gone to this extraordinary length with a letter to the White House.

So I hope, Mr. Chairman, for whom I have great respect, and the other members of the Commission, for whom I have great respect, I hope you can tell us what is going on, and I hope you yourselves can solve the problem and that we can focus not just on lessons from Fukushima, we know what happened at Fukushima, and we know what to do about it. Let's focus on all the other issues we have so we can start producing more reliable, clean electricity.

I look forward to hearing the testimony and an opportunity to ask questions.

Senator BOXER. Thank you very much, Senator.

Senator Carper, do you still wish to wait?

Senator CARPER. Yes.

Senator BOXER. OK.

Senator Lautenberg, you are next.

**OPENING STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thank you very much.

Madam Chairman, what we are seeing today is what happens when an agency that has traditionally been controlled by the industry it serves, it regulates, meets a Chairman that puts safety of the American people ahead of the interests of the industry. Chairman Jaczko is the first Chairman in history of the Nuclear Regulatory Commission that has not come from the industry. He is a scientist. He is running his agency based on science. And clearly, some powerful people don't like his style. That is what I think it comes down to, and I would like to hear something about that shortly.

After the accident at Fukushima, I sat down with Chairman Jaczko for more than an hour. I was impressed with the sharp focus in making sure our plants—and felt good about what was being done to make sure that our plants are safe and secure. In the months since that time, it seems to me he has done everything he can to move quickly to further improve our nuclear regulatory system. But that has meant taking on some entrenched and powerful interests.

In July the NRC Near-Term Task Force proposed recommendations to improve nuclear safety after Fukushima. But the nuclear industry wants to delay or block some of the recommendations. According to a report released last week, even Chairman Jaczko's fellow Commissioners tried to delay the creation of the Task Force, slowing down the release of those recommendations.

But that wasn't the first time the other members of the Commission conspired against safety measures. At least on eight occasions, the Chairman pursued safety improvements that were blocked by other Commissioners. Faced with delay tactics and other obstructions, Chairman Jaczko has used all of the legal tools available to him to improve nuclear safety, and it is no secret that nuclear com-

panies would rather have an NRC Chairman that lets industry write the rules. But that is not the way government is supposed to work.

Make no mistake: after seeing the nuclear crisis that threatened Japan this year, the American people want to know that their Government is doing everything in its power as promptly as can be done to make sure that a nuclear nightmare doesn't happen here. The American people want officials in Washington to stand up for them, not for the special interests. And in my belief, that is what Chairman Jaczko is doing.

He served his country well, and I urge him to keep pushing forward. We need strong regulators who put the interest of the public above the interests of an industry and wake up every day looking for ways to make our country safer. Mr. Jaczko has committed to improving his work relationships with other Commissioners. And I hope that the NRC Commissioners will put this dispute behind them and get on with our tasks. Above all, our priority must be nuclear safety.

The NRC's Near-Term Task Force determined our country's nuclear plants are safe. But a number of recommendations exist to make our plants safer. Our mission now must be to implement these recommendations quickly and completely. It is important to the people of New Jersey, my State, where four nuclear reactors provide our State with half of its electricity. In fact, one of the New Jersey reactors, the one located at Oyster Creek, is the nation's oldest and shares the same design as the damaged reactors in Japan.

In communities that are home to nuclear plants, people are counting on us to make sure that safety and security remain our highest priorities. And if there is a difference in style and demeanor, it seems to me that if that is the case, then perhaps we can air it in a private meeting, Madam Chairman. Let's let it all hang out.

I know one thing. I served in Europe in World War II. One of the most intemperate people that we had was General Patton. And guess what, he got it done. Thank you very much.

Senator BOXER. Thank you so much.

And now we will turn to Senator Sessions.

**OPENING STATEMENT OF HON. JEFF SESSIONS,
U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. Thank you.

I don't believe this is an issue, a disagreement over personality. I am confident that from what I have read in the record that the Chairman has violated the explicit rules of the Commission and has been abusive in his treatment of staff and other Commissioners. It is not safe to have a Chairman filter, screen, and alter reports. The Task Force that you have referred to is a task force he selected without the input of the other members and did not follow the procedures that the other members believed was appropriate.

I strongly believe that the assumption of emergency powers after Fukushima was clearly in violation of law. I am looking at a letter and will offer for the record a letter written by Mr. Dale Klein, the former Chairman of this Commission, a Ph.D., he wrote that "I can

see no reason to invoke emergency powers, because nothing in the incident would have required a suspension of normal Commission procedures. More than that, I would say nothing in the incident would qualify legally, either.”

But he goes on to say, “As I stated, I never declared emergency powers,” in the 4-years he was there, “and had I done so, I would have so stated in writing, would have called my fellow Commissioners and most importantly, solicited their support for my actions. Furthermore, I would have indicated when the authority was expected to end and would never have excluded my fellow Commissioners from the ops center as has been reported during the Fukushima event.”

This is just unthinkable, Mr. Jaczko. This is why your Commissioners are concerned about your leadership. During the August hearing I asked Mr. Jaczko a series of questions about the emergency powers. I have since received a written report from Mr. Jaczko about his activities during that time. I find his report deficient. He did not answer the two most fundamental questions. One, why did he decide to exercise emergency power? Why did he feel like he couldn’t operate with the board in a normal way? The statute, section 3 of the 1980 Act, clearly states those powers are only available for an emergency “concerning a particular facility or materials licensed or regulated by the Commission.” Fukushima was not licensed nor regulated by the NRC. And he had no right, I believe, to execute those powers.

And two, he did not address how he declared the use of powers. At our August 2nd meeting, Mr. Jaczko said a declaration was not necessary. He said it would just distract him from the work that he was doing. If you are going to take over and abrogate the responsibilities of the members of the Commission, I think the American public, talking about transparency, needs to know immediately that the normal procedures aren’t being followed. Beyond that, he provided only a brief report, just over 5 pages, and not the complete report of performance during the emergency declaration that is required.

And the report was not timely. It was produced in September after we complained about it, and the emergency occurred in March. So his report does not set forth each action he took, or decision he made, pursuant to his assumed emergency powers, not even noticed to his fellow Commissioners. His report talks in vague generalities, and extraordinary use of emergency powers certainly would require a detailed explanation and report of the actions taken.

It did not discuss the request for information that he and his staff received from the other Commissioners during this time—they requested information—or precisely how he sought to provide it. Commissioner Magwood clearly testified yesterday before the House that there have been situations where Mr. Jaczko failed to provide important information that Commissioners requested. The NRC’s executive director of operations also testified, “The Chairman influence the information and timing of information that is provided to the Commission.”

Is that improving safety in America, that one man gets to decide what the duly lawfully constituted Commission receives as infor-

mation? This is in violation of section 2(c) of the Act that says, "The Chairman shall be responsible for ensuring that the Commission is fully and currently informed about the matters within its functions."

If we don't have that, if the Chairman is not willing to comply with that, he should not be Chairman. It is just that simple. It is logical, it is the right thing to do and it is required by explicit statutory acts.

He has been an abusive person and created a workplace environment that has been very uneasy and troubling for a lot of people. I think that is an additional problem that we have here. So this behavior by the Chairman raises a high level of concern. I believe the testimony we hear today will show that to be the case.

In any event, this is a sad commentary, and I am sorry we are having to have this hearing. I wish it were not so. It does seem to me, Madam Chairman, that from what I have seen, from the interviews conducted by the House staff, that virtually all the high level staff members of the Nuclear Regulatory Commission are very troubled by the leadership of the Chairman.

I thank the Chair.

Senator BOXER. Thank you very much.

Senator, I just want to make a couple of points. One is that this particular hearing was called well before any of this sniping began. And if you look at the title, it is Review the NRC's Near-Term Task Force Recommendations for Enhancing Reactor Safety in the 21st Century. That is what this hearing is supposed to be about.

But it is totally appropriate for people on both sides to comment on these other issues. I ask unanimous consent to place in the record two documents, one, the testimony of the General Counsel of the NRC, which refutes your claims, and second, the investigation by the Inspector General that refutes your charges as well, so that we will have what you said next to—let me just make that unanimous consent request, and then I will take yours. Is there objection?

Hearing none.

[The testimony of the General Counsel is unavailable for public review. The referenced information from the Inspector General follows:]

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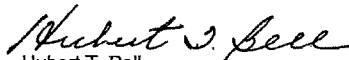
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

June 6, 2011

MEMORANDUM TO: Chairman Jaczko

FROM:


Hubert T. Bell
Inspector General

SUBJECT: NRC CHAIRMAN'S UNILATERAL DECISION TO TERMINATE
NRC'S REVIEW OF DOE YUCCA MOUNTAIN REPOSITORY
LICENSE APPLICATION (OIG CASE NO. 11-05)

This report conveys the results of an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation into an allegation that the NRC Chairman, Gregory Jaczko, unilaterally and improperly closed out the NRC's review of the Department of Energy's (DOE) Yucca Mountain repository license application while the Government was operating under a continuing resolution (CR) in fiscal year (FY) 2011. In addition, it was alleged that the Chairman was purposely preventing the Commission from completing its ruling on the Atomic Safety Licensing Board's (ASLB) decision to deny DOE's motion to withdraw its Yucca Mountain repository license application from NRC. During the course of this investigation, concerns were also raised about the Chairman's management style toward staff and Commissioners and whether his control of information prevents the other Commissioners from effectively fulfilling their statutory responsibility to address policy matters.

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OIG's investigation examined whether the Chairman exceeded his authority in directing the NRC staff to close out the Yucca Mountain license application review during the CR period, the Commission's adjudicatory voting process, and the impact the Chairman's management style has on the collegial functioning of the NRC Commission. The investigation findings appear in section III of this report.

I. BACKGROUND*NRC Mission and Commission Structure*

NRC was established in 1974 to ensure the safe use of civilian nuclear materials in the United States. NRC's regulatory mission covers nuclear reactors, nuclear materials, and nuclear waste. NRC is an independent regulatory agency headed by a five-member Commission. The Commissioners are appointed by the President and confirmed by the Senate for 5-year terms, and their terms are staggered so that one Commissioner's term expires on June 30 each year. One member is designated by the President to be the Chairman, and no more than three Commissioners may be from the same political party. This report uses the term Chairman to refer to the Commissioner appointed as Chairman, the term Commissioner to refer to the other members of the Commission, and the term Commission to refer to the entire body (Commissioners plus Chairman).

In 1979, 5 years after NRC's creation, the most serious nuclear accident in U.S. history occurred at Three Mile Island nuclear power plant in Pennsylvania. After the accident, President Jimmy Carter established the Kemeny Commission to examine and assess the events that led to the accident. In addition, NRC organized its own review, known as the Rogovin study. Both the Kemeny Commission and Rogovin study recommended that a single administrator should head NRC. However, President Carter decided to maintain a Commission structure, and he submitted Reorganization Plan No. 1 of 1980 (Reorganization Plan) to Congress with the intent to

... improve the effectiveness of the Nuclear Regulatory Commission by giving the Chairman the powers he needs to ensure efficient and coherent management in a manner that preserves, in fact enhances, the commission form of organization.¹

President Carter's main goals were to strengthen the Chairman's role to clarify where agency responsibility resided while retaining the diversity that a commission form of organization offers.

On October 1, 1980, the Reorganization Plan, as amended, became effective. The Reorganization Plan is the statutory guidance by which the Commission operates. The plan articulates the role of the Chairman as it relates to executive powers and the Commissioners as

¹ This statement was made by President Carter when he presented the Reorganization Plan to Congress on March 27, 1980.

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it relates to their policy role. Thus, the Commission's interpretation and implementation of the plan helps set the tone for how well the Commission members work together in a collegial fashion.

Section 1 of the Reorganization Plan establishes the Commission's functions and the Chairman's functions. It designates the Commission as responsible for (1) policy formulation, (2) rulemaking, and (3) orders and adjudications. It also provides that at any time, the 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."

Section 2 of the Reorganization Plan assigns the Chairman responsibility for all other functions, including (1) serving as official Commission spokesman, (2) serving as the Commission's principal executive officer responsible for developing policy planning and guidance for consideration by the Commission, (3) administrative functions of the Commission, (4) distribution of business among the offices of the Commission, (5) preparation of the Commission's budget estimate, and (6) the proposed distribution of appropriated funds according to major programs and purposes. The Reorganization Plan states that the Chairman determines the use and expenditure of funds of the Commission, "in accordance with the distribution of appropriated funds according to major programs and purposes approved by the Commission."

The plan also states that the Chairman and the Executive Director for Operations (EDO), who reports to the Chairman, are responsible for insuring the Commission is fully and currently informed about matters within its functions.

NRC's *Internal Commission Procedures* reiterate the Reorganization Plan provisions concerning the role of the Commission as a whole and the Chairman's individual role. The procedures state that each Commissioner, including the Chairman, has equal responsibility and authority in all Commission decisions and actions, has full and equal access to information pertaining to Commission responsibilities, and has one vote. The procedures note that one of the Commission's collegial functions is revision of budget estimates and determining the distribution of appropriated funds according to major programs and purposes.

The procedures also reiterate the Reorganization Plan's provision that the Commission may determine by majority vote, in any area of doubt, whether any matter, action, question, or area of inquiry pertains to policy formulation or any of the Commission's functions. OIG learned that Commissioners use a written form of communication, referred to as a Commission action memorandum (COM), to seek votes from the other Commissioners to determine whether a matter falls into the Commission's purview as opposed to that of the Chairman. A majority vote by the Commission is needed for them to address the matter as policy.

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In December 1999, OIG issued a report, *Special Evaluation of the Role and Structure of NRC's Commission* (OIG-99-E-09), which identified that Commission members, from time to time, have different interpretations of the Reorganization Plan, which can adversely affect the Commission's collegiality.²

Chairman Jaczko has been a Commissioner since January 2005 and Chairman since May 2009. His term runs through June 2013.

U.S. Nuclear Waste Policy

The current U.S. policy governing permanent disposal of spent nuclear fuel and high-level radioactive waste is defined by the Nuclear Waste Policy Act of 1982, as amended (NWPA), and the Energy Policy Act of 1992. These acts specify that spent nuclear fuel and high-level radioactive waste will be disposed of underground, in a deep geologic repository. The NWPA names Yucca Mountain, a high ridge in the Nevada desert approximately 100 miles northwest of Las Vegas, as the single candidate site for this potential geologic repository. The NWPA specifically states that NRC "shall consider an application for a construction authorization for a repository" and "shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after" the application is submitted.

DOE, which is charged with constructing and operating the repository, submitted its license application for a repository to hold no more than 70,000 metric tons of spent nuclear fuel and high-level radioactive waste to NRC on June 3, 2008, and NRC formally accepted it for review in September 2008. NRC published its Notice of Hearing in the *Federal Register* on October 22, 2008, starting the 3-year schedule set by Congress for NRC to reach a decision on whether to approve construction. If necessary, NRC may give notice to Congress of the need for an additional year to complete the review.

NRC's Atomic Safety and Licensing Board Panel³ (ASLBP) is responsible for conducting hearings on a variety of legal and technical contentions regarding the Yucca Mountain license application.

² The special evaluation defined collegiality as the relationship between a group of associates or coworkers, where authority is vested in all of the members, as they work towards a common duty or role. The full report and NRC's response to the report may be accessed at <http://www.nrc.gov/reading-rm/doc-collections/insp-gen/2000/>.

³ The panel conducts all licensing and other hearings as directed by the Commission, primarily through individual Atomic Safety and Licensing Boards (ASLBs) or single presiding officers appointed by either the Commission or the Chief Administrative Judge. The panel, which has no fixed number of positions, is composed of (1) administrative judges (full-time and part-time), who are lawyers, engineers, and scientists, and (2) administrative law judges (ALJs) who are lawyers. Administrative judges and ALJs serve as single presiding officers or on three-member boards, which generally are chaired by a lawyer, for a broad range of proceedings.

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Continuing Resolutions (CR)

A CR is a law that provides funding for Federal agencies, specific activities, or both to continue in operation when Congress and the President have not completed action on the regular appropriation acts by the beginning of the fiscal year. For the most part, CRs are temporary and intended by Congress to be stop-gap measures enacted to keep existing Federal programs functioning after the expiration of previous budget authority and until regular appropriation acts can be enacted. Unlike regular appropriation acts, CRs typically do not appropriate specified sums of money. Instead, they usually appropriate "such amounts as may be necessary" for continuing projects or activities at a certain "rate for operations." An agency may determine the pattern of its obligations under a CR provided it operates under a plan that will keep it within the rate for operations limit set by the resolution.

Office of Management and Budget (OMB) Circular A-11, *Preparation, Submission, and Execution of the Budget*, provides guidance on operating under a CR. According to OMB Circular A-11, agencies should carefully review each CR to determine the formula provided and should keep in mind that the amount available under a CR is the product of negotiations among the various factions in Congress and the Administration. OMB Circular A-11 notes that agencies may not obligate funds under a CR that would impinge on final funding prerogatives of Congress. It also states that CRs usually include provisions directing agencies to execute programs using the most limited funding actions permitted in order to provide for continuing projects and activities.

The Comptroller General, head of the Government Accountability Office, has the legal authority to issue decisions and opinions on appropriations law.

Chronology of Events

In September 2008, NRC formally accepted DOE's license application to build a geologic repository at Yucca Mountain and embarked on its review process. According to the NWPA, NRC was to reach a decision concerning the viability of the site within 3 years of the license application acceptance date.⁴

NRC planned, at the end of its technical review, to issue a safety evaluation report (SER) containing its findings on the repository design.⁵ The SER would determine whether the proposed facility would meet NRC regulations to protect public health and safety. NRC staff responsible for developing the SER decided to issue the SER in five volumes, and estimated⁶ that Volume 1 (General Information) would be complete in August 2010, Volume 3 (Review of

⁴ The NWPA additionally allows the NRC to extend the 3-year deadline by not more than 1 year.

⁵ An SER summarizes the NRC staff's technical review and safety evaluation related to the anticipated effect of a proposed license application or licensing action on public health and safety.

⁶ Dates reflect the NRC staff's last official estimate, announced in March 2010.

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Repository Safety After Permanent Closure) in November 2010, Volume 4 (Review of Administrative and Programmatic Requirements) in January 2011, and Volume 2 (Review of Repository Safety Before Permanent Closure) and Volume 5 (License Specifications and Conditions) in March 2011.

On February 2, 2010, Energy Secretary Steven Chu noted during a Senate hearing that President Barack Obama's Administration would seek to immediately suspend licensing for the Yucca Mountain repository because it was "not a workable option." DOE's budget proposed zero funding for the project in FY 2011, which conveyed the Administration's intent to terminate the Yucca Mountain project.

In February 2010, NRC published its FY 2011 Congressional Budget Justification, which also conveyed the Administration's intent concerning Yucca Mountain, stating:

The Administration has indicated that it does not support developing a repository at Yucca Mountain, Nevada. Consistent with that position, DOE may submit to the NRC a motion to withdraw or suspend its Yucca Mountain license application during FY 2010. The NRC Budget reflects that possibility. Upon the withdrawal or suspension of the licensing review, the NRC would begin an orderly closure of the technical review and adjudicatory activities and would document the work and insights gained from the review.

NRC's FY 2011 Congressional Budget Justification allotted \$10 million for the Yucca Mountain repository to "support work related to the orderly closure of the agency's Yucca Mountain licensing support activities." This amount was \$19 million less than the \$29 million appropriated for license application review activities in FY 2010.

On March 3, 2010, DOE submitted to the ASLB a motion to withdraw its Yucca Mountain license application. On June 29, 2010, the ASLB issued a decision that denied DOE's motion to withdraw, concluding that DOE lacks the authority to seek to withdraw the application. The ASLB grounded its decision in its interpretation of the NWPA, reasoning that Congress directed DOE to file the application and the NRC to consider the application and issue a final, merits-based decision approving or disapproving.

On June 30, 2010, the Commission issued an order inviting hearing participants to file briefs as to whether the Commission should review, and reverse or uphold, the ASLB's decision, thus signifying the Commission's decision to review the ASLB's decision.

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On August 10, 2010, in accordance with NRC's process, the Office of Commission Appellate Adjudication (OCAA)⁷ submitted adjudicatory paper SECY-10-0102, "U.S. Department of Energy (High-Level Waste Repository), Review of LBP-10-11, Docket No. 63-001-HLW," to the Commission for its review and vote. Commissioners began casting their votes on SECY-10-0102 on August 25, 2010, and a majority of Commissioners had voted by September 15, 2010. Chairman Jaczko did not cast his final vote at that time.

On September 30, 2010, Congress issued the first in a series of CRs, directing Federal agencies generally to spend money at FY 2010 levels, as necessary, to continue projects and activities that were conducted during FY 2010.

On October 4, 2010, the NRC Chief Financial Officer (CFO) and the EDO issued guidance to NRC staff related to budget execution under the CR. The memorandum stated that offices were to commit, obligate, and expend funds for ongoing activities at FY 2010 levels, with the exception of the High-Level Waste Program. The memorandum stated that during the CR period, new work that was not authorized and funded in FY 2010 should not be started in FY 2011. With regard to the High-Level Waste Program, the memorandum directed staff to continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget using available Nuclear Waste Fund resources during the CR period.

In early October 2010, Chairman Jaczko directed NRC staff working on the Yucca Mountain license application review to stop working on Volume 3 of the SER and proceed to orderly closure of the technical review.

On October 29, 2010, Chairman Jaczko voted on SECY-10-0102, completing the Commission's notational voting process on the Yucca Mountain matter; however, as of the date of this report, the Commission has not held an affirmation vote on the matter and the draft order continues to sit in deliberation before the Commission for affirmation.

II. INVESTIGATIVE DETAILS**A. OIG Review of CR Issue**

OIG learned that the language in the EDO's and CFO's October 4, 2010, CR budget guidance memorandum directing staff to follow FY 2011 budget guidance for High-Level Waste Program activities was based on instruction provided by the Chairman's office and was used by the Chairman to stop work on the SER and NRC's Yucca Mountain license application review.

⁷OCAA assists the Commission in its adjudicatory functions including the resolution of appeals from decisions of ASLBs; assistance includes analysis of adjudicatory matters and preparation of adjudicatory decisions consistent with Commission policy and guidance.

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While the Chairman told NRC senior officials that the CR budget guidance memorandum language had been reviewed and agreed to by his fellow Commissioners, one Commissioner was not informed of the language, two were provided some information but did not recognize the impact the memorandum would have on the SER, and one Commissioner disagreed with the language because he recognized the impact it would have on the SER.

Furthermore, while all of the NRC Commissioners in February 2010 (Chairman Jaczko, Commissioner Kristine Svinicki, and former Chairman Dale Klein) agreed to the agency's FY 2011 Congressional Budget Justification, which specified criteria that needed to be met before the license application review process could be shut down, there is disagreement among current Commissioners and a former Chairman and agency officials as to (a) whether these criteria were met and (b) the Chairman's shutdown approach.

NRC's Budgets for the High-Level Waste Repository Program

NRC's budget documents reflect a significant funding reduction for the High-Level Waste Program between FY 2010 and FY 2011 and elimination of the program by FY 2012. OIG learned that each NRC budget proposal and subsequent passback appeal letter⁸ to OMB for increased funding was voted on and approved by the Commission, although the Commission composition was different for each year.

The Commission's FY 2010 performance budget request – which was voted on and approved by former Chairman Klein, then Commissioners Jaczko and Peter Lyons, and Commissioner Svinicki – sought \$99.1 million for the program to support two concurrent processes associated with the "ongoing license review": (1) assess the technical merits of the repository design, and (2) support the adjudicatory hearing before the NRC ASLB convened to hear the technical and legal challenges posed by parties to the DOE license application. Subsequently, Congress appropriated \$29 million to NRC for the High-Level Waste Program.

For FY 2011, the Commission (Chairman Jaczko, Commissioner Svinicki, and then Commissioner Klein) requested \$39.5 million to support the High-Level Waste Program. OMB responded with \$10 million for the program. In December 2009, Chairman Jaczko sent NRC's FY 2011 passback letter of appeal to OMB. This letter, which had been approved by the Commission, stated that DOE:

... is expected to submit to the NRC a motion to withdraw or suspend its Yucca Mountain license application before the end of FY 2010. Assuming this scenario, the \$10 million provided in the FY 2011 pass-back would allow for us to start the process for an orderly disposition of the adjudicatory and technical review activities. Additional resources may be needed for an orderly disposition of activities beyond FY 2011, the amount dependent upon the timing of the motion.

⁸ The passback appeal letter is also referred to as the reclama letter.

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NRC's FY 2011 Congressional Budget Justification, published in February 2010 after Commission approval, also referenced the possibility that DOE would move to suspend or withdraw its license application and noted:

Upon the withdrawal or suspension of the licensing review, the NRC would begin an orderly closure of the technical review and adjudicatory activities and would document the work and insights gained from the review.

Although this document also stated that NRC had requested \$10 million, including 32 FTE, to provide for licensing activities, the only activities described were those related to the orderly closure of the agency's Yucca Mountain licensing support activities.

OIG noted differences between NRC's December 2009 passback letter of appeal and the February 2010 Congressional Budget Justification for FY 2011 with regard to (1) proposed activities and (2) prerequisites to trigger those activities. While the NRC passback appeal letter states that *orderly disposition of the adjudicatory and technical review activities* would be based upon a *motion to withdraw or suspend*, the Congressional Budget Justification states the *orderly closure of the technical review and adjudicatory activities* would be based on *withdrawal or suspension of the licensing review*.

For FY 2012, the Commission (Chairman Jaczko and Commissioners Svinicki, William Ostendorff, William Magwood, and George Apostolakis) requested \$4.0 million for the termination of all program activities. OMB, however, allocated no money to NRC for the High-Level Waste Program, which is reflected in NRC's FY 2012 Congressional Budget Justification.

CR Budget Guidance Memorandum

OIG reviewed the EDO's and CFO's October 4, 2010, CR budget guidance memorandum and four earlier versions that predated the final document. The final October 4, 2010 memorandum stated that NRC's FY 2011 budget request sustains agency programs at about the same level as FY 2010, with the exception of the High-Level Waste Program and that offices should therefore proceed to commit, obligate, and expend funds for ongoing activities to effectively use available resources during the CR. The memorandum specified that, "During the CR period, new work that was not authorized and funded in FY 2010 should not be started in FY 2011." It also provided:

With respect to the High-Level Waste Program, the CR legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget using available Nuclear Waste Fund resources during the CR.

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The first version of this memorandum – dated August 31, 2010, contained no mention of the Yucca Mountain repository license application review. Two later versions (dated September 13 and September 14, 2010) directed that the agency would continue to conduct its Yucca Mountain license application review with any available FY 2010 carryover funds until exhausted, and made no reference to the FY 2011 budget. The first version reviewed by OIG that made mention of the FY 2011 budget was dated September 27, 2010. This version directed staff to continue its activities on Yucca Mountain in accordance with the FY 2011 budget.

Commissioner Ostendorff's COM

OIG reviewed a COM prepared by Commissioner Ostendorff, titled, "Commission Direction on Staff Budget Guidance Under Fiscal Year (FY) Continuing Resolution." This document was submitted by Commissioner Ostendorff to the other Commissioners on October 6, 2010, in response to the CR budget guidance memorandum sent from the EDO and CFO to the staff on October 4, 2010. The COM states that the direction given to staff in the October 4, 2010 memorandum to continue its Yucca Mountain activities in accordance with FY 2011 budget guidance "is a significant policy matter that I believe warrants the Commission's attention, and which requires that the Commission give direction to the staff to avoid confusion on the Commission's intent for operation under the Continuing Resolution." Commissioner Ostendorff referred to a March 30, 2010 memorandum titled, "Plans for the High-Level Waste Repository Program," from the EDO to the Commission that conveyed the staff's intent to complete SER Volumes 1 and 3 no later than August and November 2010, respectively, and the staff's plan to continue to work on any remaining SER volumes until FY 2010 funds were exhausted. Commissioner Ostendorff said that the March 30, 2010 memorandum was provided to the Commission in the context of both the FY 2010 appropriation and the FY 2011 budget request and must, therefore, continue as standing guidance to staff.

Commissioner Ostendorff wrote, "It is my view that whatever the ultimate disposition of the High-Level Waste Repository activity, complete SER documents are the best and most appropriate way in which to memorialize the Staff's work product." He proposed that the Commission take action no later than October 8, 2010, to direct staff to continue to work on the remaining SER volumes as stated in the March 30, 2010 memorandum, at the rate for operations appropriate given the proposed FY 2011 budget as augmented by reprogrammed funds remaining from FY 2010 appropriations.

Memo from NRC General Counsel Regarding CR Budget Guidance Memorandum

OIG also reviewed an October 15, 2010 memorandum from NRC's General Counsel to the Chairman and Commissioners, providing the General Counsel's views regarding the October 4, 2010 CR budget guidance memorandum. The General Counsel concluded in the memorandum that focusing the agency's High-Level Waste Program activities during the CR period on activities related to the orderly closure of the Yucca Mountain review does not violate legal requirements or the principles of appropriations law. According to the General Counsel, the agency's guidance was appropriate for the following reasons:

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- The agency's proposed expenditures during the CR are consistent with the terms of the CR because they support and are within the scope of the continuing projects or activities conducted in the prior fiscal year; unless the CR contains more specific language, the phrase "projects or activities" generally refers to the total appropriation for the account, not to the specific activities contained as activities in a budget submission or committee report.
- While the Yucca Mountain license application may be on a different trajectory than in early fiscal years, it cannot be said that the agency is spending its High-Level Waste Program funds under the CR in a manner unrelated to its Yucca Mountain repository review or contrary to the express direction in the pertinent legislation. Even if activities under the EDO/CFO's guidance are of a more limited scope than in the previous fiscal year, it does not appear that such activities would irreversibly compromise or preclude NRC's ability to engage in a license application review if Congress were to increase NRC's High-Level Waste Program budget and direct a revival of the Yucca Mountain repository review.
- Agencies are directed to act prudently in expending funds under a CR so as not to impinge on the final funding prerogatives of Congress. NRC requested an appropriation from the Nuclear Waste Fund for FY 2011 of \$10 million, or about one-third of the FY 2010 appropriation, and there was no indication from the Senate or House that the FY 2011 budget would be increased.

The General Counsel's memorandum also noted that there had also been some internal debate over whether final NRC action permitting DOE to withdraw its application is a condition precedent to the orderly closure activities under the FY 2011 guidance reflected in the Commission's Congressional Budget Justification. Addressing this matter, the General Counsel wrote, "Considering the entire text of the NRC budget document and the context in which it was submitted, I do not believe such a conclusion necessarily follows."

OIG Interviews of Agency Officials Related to CR Issue

Interviews of NMSS, OEDO, and OCFO Officials

OIG learned, through interviews with Office of Nuclear Material Safety and Safeguards (NMSS), Office of the Executive Director for Operations (OEDO), and Office of the Chief Financial Officer (OCFO) officials, that during the summer of 2010, NRC managers responsible for NRC's High-Level Waste Program anticipated there would be about \$7 million in high-level waste funding left over (carryover) at the end of FY 2010. The managers were interested in seeking Commission feedback about what to do with the carryover funding in FY 2011, given that FY 2010 High-Level Waste Program funding was for licensing review and FY 2011 High-Level Waste Program funding was for orderly shutdown of the High-Level Waste Program. Because a Commission decision was still pending concerning ASLB's denial of DOE's motion to withdraw its license application, the managers sought Commission feedback about how to proceed with the licensing review.

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OIG learned that the NMSS Director initially sought to write a paper for Commission review concerning the staff's plans for the carryover money; however, a decision was made instead to inform the Commission of the staff's plans via a CR budget guidance memorandum issued to staff from the EDO and CFO giving guidance on how to carry out programs and activities during the CR period. The Deputy Executive Director (DEDO) for Materials, Waste, Research, Tribal and Compliance Programs initially proposed that the CR budget guidance memorandum direct High-Level Waste Program staff to use FY 2010 funds until they were exhausted to continue the license application review; language to this effect was included in early versions of the CR budget guidance memorandum. However, the Chairman's office asked to review the draft memorandum and subsequently provided direction to OEDO staff and the CFO that resulted in the official memorandum, issued on October 4, 2010, directing staff to continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget.

Interview of NMSS Director

The NMSS Director⁹ told OIG that she had written a memorandum that she planned to present to the Commission in September 2010 conveying the staff's intent to complete Volume 3 of the SER with the remaining FY 2010 funding and the remaining SER volumes no later than the 2nd quarter of FY 2011 provided the availability of resources and the agency had not terminated the license application review. However, the DEDO for Materials, Waste, Research, Tribal and Compliance Programs told her they did not need the memorandum and would handle the issue through guidance in the CR budget guidance memorandum. The DEDO initially told the NMSS Director that the CR guidance would be to use FY 2010 and FY 2011 funds to continue the review. However, the NMSS Director later learned that the direction from the Chairman was to transition to closure upon entering the new fiscal year. The NMSS Director was concerned about whether the agency could use the FY 2010 carryover – which had been appropriated for license review – during FY 2011 for close-out activities.

Interview of DEDO for Materials, Waste, Research, Tribal and Compliance Programs

The DEDO for Materials, Waste, Research, Tribal and Compliance Programs told OIG that in the absence of a Commission decision on the ASLB adjudicatory matter, he and the NMSS Director recognized the need to communicate to the Commission, and that the Commission needed to provide direction for the High-Level Waste Program. The DEDO told the NMSS Director he would rather communicate through the CR budget guidance memorandum than a paper because it would yield a quicker response. He thought that due to the diversity of views on the Commission, a memorandum simply to inform them would promptly be converted into a vote, and it was unlikely they would reach a decision within a month. The DEDO wanted to convey in the CR budget guidance memorandum that the staff would use FY 2010 carryover funds in FY 2011, which would yield a net of \$17 million (\$10 million from the FY 2011 budget

⁹ The NMSS Director began working in that position in May 2010. Prior to that, she was the Deputy Director for NMSS, and the DEDO for Materials, Waste, Research, Tribal and Compliance Programs was the NMSS Director.

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and \$7 million in FY 2010 carryover funds) to move ahead with license application review activities until they had a final decision from the Commission. This was the language the DEDO originally inserted into early draft versions of the CR budget guidance memorandum. However, after the CFO shared the memorandum with the Chairman's office, the Chairman's Policy Director said she thought the Chairman would not want this type of language in the memorandum because it would constitute a change in policy. The DEDO said he had not previously viewed the language in that way, but the Chairman's Policy Director conveyed that when the Commission last addressed the issue in the FY 2011 Congressional Budget Justification, the language was to close out the program.

The DEDO said OEDO and OCFO staff subsequently worked with the Chairman's office to revise the language to reflect something like, ". . . should continue to follow the established Commission policy." He thought the language ultimately used in the memorandum seemed innocuous and did not indicate specifically that this meant "close down the licensing process and commence the orderly closure of the program." He asked the Chairman's Policy Director why not be more explicit in the CR budget guidance memorandum to reflect what was intended, and the Chairman's Policy Director told him it was unnecessary because the CR budget guidance memorandum was pointing to the FY 2011 Congressional Budget Justification, which already captured the intent in writing. The DEDO said he questioned both the Chairman's Policy Director and the Chairman's Chief of Staff as to whether people would understand the connection. The DEDO told them the Congressional Budget Justification paragraph on the High-Level Waste Program could be read as "entry conditions," providing that until the agency allowed "withdrawal or suspension," it should continue the license application review. The Chairman's Policy Director and Chief of Staff responded that this was incorrect and that the budget justification language was background and set the context for the status of the program. They said the program's status was described in the workload paragraph of the Congressional Budget Justification, which reflects what the agency is going to use its resources and funding for. In this case, they said, this was closing down the program.

The DEDO also said the Chairman's Chief of Staff told him that in anticipating the potential controversy that would ensue with the implementation of the CR budget guidance memorandum, the Chairman had consulted with the other Commissioners and that at least a majority of the Commission was supportive of moving forward with the orderly closure of the High-Level Waste Program. The DEDO also recalled a meeting with the Chairman during which the Chairman stated he would complete discussions with the other Commissioners before the end of September 2010, and then NRC would initiate an orderly closure of the High-Level Waste Program.

Interview of the CFO

The CFO told OIG that in August 2010 the staff began generating variations of the CR budget guidance memorandum. At one point, they were prepared to issue the memorandum at which time the Chairman asked to see it. Up until then, his office had not received any direction from the Chairman's office on the memorandum, and the CFO thought the Chairman just wanted to

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be informed about the document. He said that the Chairman's Policy Director e-mailed him the paragraph on the High-Level Waste Program and he directed his staff to insert the language into the memorandum. He recalled that just before one of the Chairman's regularly scheduled meetings, the Chairman called the CFO, the General Counsel, and the EDO into his office and asked whether they were "all okay with this memorandum." The CFO said the Chairman said, "I'm going to talk to my other Commissioners, but I think there's a good chance that this might turn into a vote on Yucca Mountain." The CFO said he did not understand how the memorandum could turn into a vote on Yucca Mountain because, in his view, the memorandum was a financial budget execution memorandum and not intended to redirect the staff programmatically. He said he was surprised at the interpretation by the Commission that the memorandum was providing programmatic direction. The CFO recalled that on October 1, 2010, Commissioner Ostendorff's Chief of Staff called him at home to tell him he had spoken with the Chairman's Chief of Staff about the CR budget guidance memorandum and had problems with the paragraph concerning high-level waste. Later that evening, the Chairman's Chief of Staff called him at home and said the Chairman's office had clearance on all of the Commission offices to sign out the memorandum. The CFO said that after the issuance of the CR memorandum and the direction to initiate High-Level Waste Program close-out activities, he asked the Chairman if he had missed something during the meeting with the General Counsel and EDO. The Chairman explained that his intent was that the memorandum would result in a change in direction for the staff and they were going to go from issuing an SER to a NUREG.¹⁰ The CFO later asked the Chairman's Policy Director whether the conditions regarding withdrawal or suspension reflected in the FY 2011 Congressional Budget Justification had been met. She replied that the conditions were met when DOE submitted its motion to withdraw its license application.

Interview of the EDO

The EDO said that initially there was no plan to include specific language about the High-Level Waste Program in the CR budget guidance memorandum. At the same time, he said, given the Administration's direction to withdraw DOE's Yucca Mountain license application, the staff understood the High-Level Waste Program was on a path to closure. The DEDO for Materials, Waste, Research, Tribal and Compliance Programs and he had asked to prepare a paper for the Commission describing how the staff would go about close-out and how much funding would be needed. The staff's intent was to use the \$7 million in carryover funds for continuation of the technical review and the \$10 million proposed for the FY 2011 budget for close-out activities. The EDO said that one of his primary responsibilities as EDO is to ensure the entire Commission is kept informed, and that a staff paper on the close-out plan would serve to inform the Commission and seek its input on the matter, which he felt was necessary. The EDO said the staff had never prepared any papers for the Commission discussing plans for the closure of the High-Level Waste Program in part because the NWPA required NRC to perform a quality

¹⁰NRC NUREG documents communicate various types of information, including support for regulatory decisions, guidance for complying with regulations, results of task force investigations, results of contractor research programs, resolution of generic safety issues, and proceedings of conferences and workshops,

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review in a timely manner. According to the EDO, his mindset and that of the staff was to accomplish as much of the technical review as they could. He and the NMSS staff believed that even if DOE were to withdraw the application, or the facility was not permitted to operate, it would benefit the country for NRC to have completed the technical review. Furthermore, he felt that because there had not been a Commission decision on DOE's withdrawal request, they should continue the technical review. However, over a period of weeks and months and interaction with the Chairman's office, they received direction from the Chairman to address the High-Level Waste Program in the CR budget guidance memorandum. The EDO said he understood that the Chairman's intent, prior to issuance of the CR budget guidance memorandum, was to close out the license application review process.

The EDO thought it would be okay to address the issue in the CR budget guidance memorandum because he believed the entire Commission would review the CR budget guidance memorandum. He thought the CR budget guidance memorandum would accomplish what needed to be done with regard to the High-Level Waste Program absent a paper from the staff. He believed that if the Commissioners decided the matter was a policy issue, they could vote on it. He said he expressed his concerns to the Chairman that the Commission needed to see the memorandum, and the Chairman told him the memorandum would not be issued until he had spoken with the other Commissioners and all were on board with the memorandum language. Prior to the EDO and CFO signing the memorandum, the Chairman told the EDO that all four Commissioners were in agreement with the language, understood that they were going to close out the High-Level Waste Program, and authorized the issuance of the CR budget guidance memorandum. The EDO anticipated that the contentious issue for the Commission would be whether they would close out or continue the technical review. The CR budget guidance memorandum did not provide any direction on the issue, so the EDO felt it was okay to sign because on face value, it did not provide questionable direction.

Interview of Commissioner Apostolakis

Commissioner Apostolakis told OIG that before the October 4, 2010 CR budget guidance memorandum was issued to the NRC staff, Chairman Jaczko advised him that he was prepared to authorize budget guidance under the CR process and wanted his support. During this conversation, which occurred on September 30, 2010, Chairman Jaczko asked Commissioner Apostolakis whether he would support him if a Commissioner challenged the CR guidance. Chairman Jaczko assured Commissioner Apostolakis that OGC advised him the planned CR guidance was appropriate. Chairman Jaczko requested that he respond to his question that same day. Commissioner Apostolakis told the Chairman that he did not see a problem but wanted to discuss the matter with his staff. Commissioner Apostolakis told OIG that the CR guidance to the staff to follow the Commission's FY 2011 budget direction subject to funding conditions under the CR seemed innocuous. His understanding of a CR was that the agency would continue ongoing work from the previous year.

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Following the September 30, 2010 discussion with Chairman Jaczko, Commissioner Apostolakis' staff received a copy of the paragraph that discussed the High-Level Waste Program in the CR budget guidance memorandum. He recalled that his staff showed him language from the Commission's FY 2011 budget request, which stated that the orderly transition would begin upon withdrawal of the license application or suspension of the licensing review. Commissioner Apostolakis advised that although Chairman Jaczko said he would ask the staff to conduct activities in accordance with the FY 2011 budget, this is not what he did. Commissioner Apostolakis stated that the FY 2011 budget reflected that if the proceedings were suspended, then the agency would proceed with close-out of the license application review. However, the proceedings were not suspended. The Chairman ignored the portion of the budget which referenced upon withdrawal or suspension and directed the staff to close out the High-Level Waste Program. Commissioner Apostolakis stated that Chairman Jaczko did not explain to him what the CR guidance would mean in practice.

Commissioner Apostolakis said that he did not know from his initial discussion with Chairman Jaczko that the likely effect of the October 4, 2010 CR guidance was that SER Volume 3 would not be issued in November 2010 as originally scheduled. Members of his staff raised the prospect that the NRC staff would not complete SER Volume 3 and would work to incorporate Volume 3 in a NUREG report. He did not know what work was required to complete Volume 3.

During the week of October 4, 2010, Chairman Jaczko sought Commissioner Apostolakis' support in opposing any challenge to the CR budget guidance memorandum based on Commissioner Ostendorff's October 6, 2010 COM. Commissioner Apostolakis told Chairman Jaczko he did not provide him with details of the practical impact of the CR guidance when the Chairman originally requested his support. Commissioner Apostolakis was concerned about preserving the staff's work product and he wanted the Commission to see the staff's plan for implementing the October 4, 2010 CR memorandum guidance. The Chairman told him that preserving the staff's work products, such as the draft SER Volume 3, in the internal agency records would not be a problem. However, the Chairman did not want to include regulatory conclusions in any public release of Volume 3.

During the week of October 4, 2010, Commissioner Apostolakis also discussed issues related to the budget guidance and Commissioner Ostendorff's COM with the Chairman and Commissioner Magwood. On October 7, 2010, Commissioner Apostolakis learned of a petition filed with the NRC Commission on behalf of Aiken County, SC, and the States of South Carolina and Washington, raising issues about the budget guidance and its relation to the adjudicatory High-Level Waste proceedings, from which he had recused himself. Based upon this action he decided he would not participate in voting on Commissioner Ostendorff's COM.

Interview of Commissioner Magwood

Commissioner Magwood told OIG that on September 28, 2010, during a regularly scheduled periodic meeting with Chairman Jaczko, the Chairman informed him that the NRC staff was developing a plan for operating under the CR passed by Congress and that this plan would

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move toward close-out of the High-Level Waste Program as anticipated by the Commission in the FY 2011 budget. According to Commissioner Magwood, the Chairman said that the NRC staff drafted language regarding the High-Level Waste Program and the Chairman asked if he would review the language and let him know if he had any objection. Commissioner Magwood told the Chairman that it would be appropriate to formulate a plan for moving forward and that he would review the draft guidance. He also told the Chairman that he would not support a "precipitous" termination of the High-Level Waste Program. According to Commissioner Magwood, the Chairman assured him that this was not his expectation.

Commissioner Magwood told OIG that his staff reviewed the draft language on the High-Level Waste Program and compared it to the FY 2010 budget and FY 2011 guidance. His staff concluded that the language, which indicated that the staff should begin implementing the FY 2011 plan as reflected in the agency's Congressional Budget Justification, was consistent with both Commission policy and Congressional actions to date. Commissioner Magwood said he thought it prudent to ensure that the NRC's rate of expenditures on the High-Level Waste Program remained within the \$10-million ceiling. He instructed his staff to inform the Chairman's office that he would not object to the instruction in the draft CR budget guidance memorandum.

Commissioner Magwood stated that after the October 4, 2010, CR budget guidance memorandum was issued, he learned this memorandum was interpreted as requiring the staff to shut down its work on the Yucca Mountain license application, not issue SER Volume 3 as planned in November 2010, remove the findings from SER Volume 3, and issue the document as a technical evaluation report (TER).

Commissioner Magwood said that after discussions with NRC senior staff members, he learned that what had been portrayed as guidance developed by senior agency staff had actually come from the Chairman. On October 7, 2010, he discussed concerns he had about Chairman Jaczko's actions with the Chairman. According to Commissioner Magwood, the Chairman became very agitated and said that he would never have taken these actions had both Commissioners Apostolakis and Magwood not agreed to support the guidance. Commissioner Magwood said he objected to this statement quite strongly and that the Chairman never told him his plan had been to shut down the High-Level Waste Program and withhold publication of SER Volume 3. The Chairman responded to him, "You should have asked." Commissioner Magwood said that under the statutory framework, the Chairman had an obligation to provide full and accurate information to Commissioners.

After the staff was directed to stop working on the SER, Commissioner Magwood considered writing a COM to address this matter directly. He later found out that Commissioner Ostendorff felt strongly about the actions of the Chairman and was in the process of publishing a COM. He encouraged Commissioner Ostendorff to proceed and offered suggestions to the COM's development which was published on October 6, 2010.

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On October 8, 2010, Commissioner Magwood concluded that Commissioner Ostendorff's views and his were in agreement with regard to the Chairman's actions. However, based on subsequent motions filed by petitioners from Aiken County, SC, and South Carolina and Commissioner Apostolakis' recusal from the matter, he decided the best thing to do was to step back from the matter to examine the issues, particularly the legal issue. Therefore, he decided not to participate in response to Commissioner Ostendorff's COM.

On November 12, 2010, Commissioner Magwood issued a COM to the Chairman and Commissioners pertaining to future activities of the High-Level Waste Program. As of the publication date of this report, this matter was still under deliberation by the Commission.

Interview of Commissioner Ostendorff

Commissioner Ostendorff told OIG that on September 30, 2010, his Chief of Staff told him that the Chairman was planning to issue guidance on the CR and that this guidance would include language that would effectively have the staff discontinue work on DOE's license application, specifically SER Volume 3. His office received a copy of the draft language in the CR budget guidance memorandum pertaining to the High-Level Waste Program from the Chairman's Chief of Staff on the evening of September 30. Commissioner Ostendorff said his Chief of Staff was informed that Commissioners Magwood and Apostolakis had already given their support to this guidance, so there was no point in his office making an issue of it since a majority had already agreed to the CR guidance. The Chairman's Chief of Staff told Commissioner Ostendorff's Chief of Staff that if Commissioner Ostendorff disagreed with the CR guidance, they should discuss a compromise on the Yucca Mountain adjudicatory matter.

Commissioner Ostendorff stated that on October 1, 2010, Chairman Jaczko told him that the CR budget guidance memorandum would have the staff commence orderly closure of the Yucca Mountain license application review. Ostendorff told the Chairman that he disagreed with his direction, the direction was wrong, and he should not issue it. Chairman Jaczko told him he would consider his advice, and get back to him before he made a decision. Later that day, Chairman Jaczko informed him that he had decided to issue the guidance. Commissioner Ostendorff said he told the Chairman that he strongly disagreed with his decision. He said he asked Chairman Jaczko what he planned to do with respect to SER Volume 3. According to Commissioner Ostendorff, the Chairman told him that SER Volume 3 would not be issued in this current form, the staff's findings would be removed from the document, and a document would eventually be issued, possibly as a NUREG.

Commissioner Ostendorff advised OIG that he disagreed with the CR guidance memorandum's direction to follow FY 2011 budget guidance because the conditions that would authorize "orderly closure" had not been met. According to Commissioner Ostendorff, the FY 2011 budget request stated that such closure would not begin until "withdrawal or suspension of the licensing review." Since the issue of whether the license application may be withdrawn was currently before the Commission and a final decision had not been made, that condition clearly had not been met.

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On October 4, 2010, Commissioner Ostendorff related that he spoke with Commissioner Svinicki about the CR guidance memorandum, and explained his concerns on the matter and that he considered issuing a COM. Later that day he was informed that the EDO and CFO had published the CR budget guidance memorandum.

On October 5, 2010, Commissioner Ostendorff directed his staff to prepare a COM that would raise the CR guidance issue as a policy matter for Commission consideration. He met separately with Commissioners Apostolakis and Magwood to discuss his concerns and explain his objections concerning the CR budget guidance memorandum. The feedback he received from both Commissioners was that they felt the memorandum's guidance on the High-Level Waste Program was wrong. Commissioner Ostendorff's COM was issued on October 6, and on October 8, he learned that Chairman Jaczko and Commissioners Apostolakis and Magwood decided not to participate. Only Commissioner Svinicki voted on the matter.

Interview of Commissioner Svinicki

Commissioner Svinicki told OIG that on the morning of September 30, 2010, her staff learned that Chairman Jaczko was proposing to unilaterally issue guidance to the NRC staff on the use of funds for the High-Level Waste Program during the FY 2011 CR. The CR guidance would direct agency staff to follow the FY 2011 budget direction.

Commissioner Svinicki stated that although she attended a regularly-scheduled periodic meeting on the afternoon of September 30 with Chairman Jaczko, neither she nor the Chairman raised the CR budget guidance memorandum. She did not raise the issue because she was not sure if the CR budget guidance memorandum was a rumor. Nevertheless, her legal counsel contacted the NRC General Counsel to question the legal basis for the purported CR guidance. Also during the afternoon of September 30, she learned from Commissioner Ostendorff that he was aware of the same rumor concerning the CR budget guidance memorandum. Both she and Commissioner Ostendorff agreed that the CR guidance was not appropriate. During the evening of September 30, Commissioner Ostendorff e-mailed her a copy of the CR guidance language, which was identical to the language included in the final October 4, 2010 CR budget guidance memorandum. Commissioner Svinicki said that Commissioner Ostendorff's staff was approached by the Chairman's Chief of Staff to discuss the CR budget guidance memorandum. Commissioner Ostendorff's staff specifically asked the Chairman's Chief of Staff if Commissioner Svinicki's office had been informed of the CR budget guidance memorandum. The Chairman's Chief of Staff replied that Commissioner Svinicki's office was already aware of the guidance because her staff had made inquiries to the General Counsel.

While Commissioner Svinicki was on international travel from October 1 to 9, 2010, she learned that the CR budget guidance memorandum was officially issued on October 4. On October 5, her staff informed Chairman Jaczko's office that she objected to the CR guidance.

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Commissioner Svinicki stated that she did not have any direct communication with Chairman Jaczko regarding this matter before the CR budget guidance memorandum was issued on October 4, 2010. She learned on October 1 that the Chairman's staff left two messages for her staff on the evening of September 30 and on October 1. After the CR budget guidance memorandum was issued, she questioned the CFO about his knowledge and involvement in the development of the memorandum. The CFO told her although he was out of the office during much of the memorandum's development, when he returned, he inquired about the status of the memorandum and was told by the Chairman's Policy Director that Chairman Jaczko was walking the guidance memorandum around to the Commissioners.

Commissioner Svinicki said that in reviewing the FY 2011 Congressional Budget Justification and her vote on this budget, she noted that her vote contained specific edits to the narrative description of activities related to the High-Level Waste Program. Of note, she voted to change the language describing the commencement of orderly close-out of the high-level waste technical review from "Assuming withdrawal or suspension..." to "Upon withdrawal or suspension..." The purpose of this edit was to make clear that orderly close-out of the High-Level Waste Program would not begin unless and until the license application had been withdrawn or the technical review had been suspended. This edit was supported by the Commission at that time (Chairman Jaczko, then Commissioner Klein, and Commissioner Svinicki) and was incorporated into the final document.

Commissioner Svinicki told OIG that when reviewing her vote on the FY 2011 budget in light of the events related to the October 4, 2010 CR budget guidance memorandum, she recalled a conversation she had with Chairman Jaczko regarding her January 2010 vote. Shortly after she cast her vote, Chairman Jaczko requested to meet with her. During this meeting, Chairman Jaczko expressed his frustration that she had voted to edit language in the FY 2011 Congressional Budget Justification document, deeming most of her edits insignificant. Further, Chairman Jaczko interpreted her edits to the language describing the High-Level Waste Program to indicate a belief on her part that he was at the NRC for the purpose of dismantling and terminating the Yucca Mountain program at the bidding of Senator Reid. Commissioner Svinicki said the Chairman was very animated and objected to this perceived accusation. She told Chairman Jaczko that none of her edits were intended as an accusation, but rather they were offered to improve the quality of the document on substantive matters.

Commissioner Svinicki said that during the voting process on the appeal to OMB for the FY 2011 budget passback, she had proposed edits to the passback appeal letter. However, the Chairman called her and advised that he was leaving the building in "8 minutes" and if she did not retract her vote edits on the passback appeal letter, he would leave and not submit the letter on behalf of the agency to OMB, which would cause the agency to absorb the funding reductions proposed by OMB. Given this ultimatum, she agreed to the edits of another Commissioner which were similar to hers.

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Commissioner Svinicki told OIG that on October 14, 2010, she voted to approve Commissioner Ostendorff's COM because the FY 2010 budget direction governs during the CR, and even if that were not the case, the prerequisites in the FY 2011 budget under which "orderly closure" of high-level waste review activities would begin had not been satisfied. She objected to the Chairman's CR direction because the NRC Commission had not concluded action on the Commission's ongoing adjudicatory proceedings on the Yucca Mountain license application. She said the direction to NRC staff to stop the license application technical review could achieve the same practical result as overturning the ASLB's decision, effectively granting DOE's motion to withdraw. The proper vehicle for resolving the legal question of DOE's authority to withdraw the license application is through Commission action on the adjudicatory matter, and any direction on the use of funds during the CR, absent specific direction from Congress to the contrary, should not predetermine the outcome of the legal matter pending before the Commission.

Interview of Former Chairman Klein¹¹

Former Chairman Klein recalled that he and Commissioner Svinicki wanted two things: first, to follow the NWPAs requirement that NRC evaluate DOE's license application and, second, to see a solution to the high-level waste issue. They felt strongly that the NRC staff needed to make a determination whether the Yucca Mountain site was acceptable or not, and they wanted to make sure the staff had the resources needed to make that determination. There was considerable uncertainty about the future of the High-Level Waste Program, and he and Commissioner Svinicki paid attention to the FY 2011 budget language to make sure it allowed NRC and the staff to fulfill these responsibilities. Even if there was a request to withdraw the license application, a determination had not, and has still not, been made as to whether or not it can be withdrawn. Former Chairman Klein said it was important to capture all the knowledge gained through the license application review and complete the work that staff had ongoing. For example, if they had an SER that was about to be finished, it should be finished. Former Chairman Klein felt strongly that until the license application was withdrawn legally and/or suspended legally, NRC needed to do as much as it could to evaluate the application.

Interview of Chairman's Chief of Staff

The Chairman's Chief of Staff told OIG that he had minimal involvement in the development and publication of the CR budget guidance memorandum and that the draft document was presented to the Chairman's office from the CFO's office. He said the Chairman's Policy Director provided guidance to the EDO and CFO regarding the memorandum on behalf of the Chairman and that it should follow established Commission policy and OMB Circular A-11. The Chairman spoke with Commissioners Ostendorff, Apostolakis, and Magwood about the CR budget guidance memorandum but did not talk to Commissioner Svinicki.

¹¹ From July 2006 to May 2009, Dale Klein was the NRC Chairman. From May 2009 until he resigned in March 2010, he served as a Commissioner.

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According to the Chairman's Chief of Staff, the intent of the CR guidance was to provide a spending limit against the proposed FY 2011 budget, which OMB had directed. However, in the case of high-level waste, Congress did not provide specific direction on how to spend those funds, and NRC actually conveyed its spending intent to Congress through its Congressional Budget Justification and its reclama process. The intent was to spend \$10 million, based on the President's budget, and the Commission's decision to proceed to close-out. The Commission knew that for the prior fiscal year, Congress had given NRC half of what it had requested, which conveyed that they were moving NRC toward close-out rather than ramping up the review. The Commission did not oppose OMB's proposed funding for the High-Level Waste Program for FY 2011, and the letter that NRC sent to OMB reflected that the Commission expected DOE to withdraw its license application and understood that the \$10 million would be used for orderly close-out. The policy was set when the Commission voted on the passback appeal letter to OMB.

Interview of the General Counsel

The General Counsel told OIG that the direction given in the CR budget guidance memorandum was consistent with existing Commission budget guidance. He recognized some ambiguities, but believed on the whole the CR budget guidance memorandum was consistent with existing Commission budget guidance, and was appropriate to issue. Had the Commission disagreed with that, they could have voted to overturn it, or given some other direction. The General Counsel said that changing this direction would require a majority vote by the Commission and that focusing on close-out activities was a rational and lawful way to proceed. Moreover, close-out activities do not constitute new work under the CR. The CR budget guidance memorandum does not preclude NRC from resuming its licensing review if Congress decides to fully fund DOE and NRC.

The General Counsel noted the wording difference between the OMB passback appeal letter and the NRC Congressional Budget Justification, indicating the OMB letter contained far less ambiguity concerning the conditions to begin close-out activities. He said the NRC's Congressional Budget Justification is an informative document that describes NRC's budget request but ultimately does not have any legal force and effect. Rather, it is the enacted budget that is appropriated by Congress that has authority. When the Congressional Budget Justification is not representative of the final appropriation, it is of somewhat limited value.

Interview of Chairman Jaczko

Chairman Jaczko told OIG that he met with the General Counsel, EDO, and CFO about the language in the CR budget guidance memorandum. During this meeting, he asked them what they thought it meant. He asked if everyone understood that the language meant close-out of the program and whether they were in alignment. He specifically asked, "Does everybody understand what this means, and that this means close-out?" He recalled the EDO said, "I don't really understand what the big deal is with this." Chairman Jaczko then told them he was going to talk to the Commission about the memorandum before he issued it. He said that "there may be Commissioners who don't agree with this, and will try and make it a policy issue." He told OIG that

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the CR budget guidance memorandum was his decision and he wanted to talk directly to the Commissioners to explain it. He did not recall whether he informed the EDO that the discussions had occurred; however, he recalled telling the EDO that he could publish the memorandum.

He told Commissioner Apostolakis that the memorandum would result in closing out the High-Level Waste Program and he was doing this under his authority. Chairman Jaczko explained that the other Commissioners could make an argument that this was a policy issue for the Commission, and he wanted his support if that happened. He specifically recalled coming back from the meeting with Commissioner Apostolakis with the impression that Commissioner Apostolakis did not understand what he meant. As a result, he asked his Chief of Staff to follow up with Commissioner Apostolakis' Chief of Staff to ensure his message was understood.

He did not recall much of the conversation he had with Commissioner Magwood, but did recall he was clear that the CR budget memorandum guidance was to begin closing out the High-Level Waste Program. Commissioner Magwood's Chief of Staff subsequently contacted his office and related that "Commissioner Magwood was fine with how you're going to go forward with the memo." Chairman Jaczko stated at this point he decided to go forward and direct the CFO and EDO to publish the memorandum. Chairman Jaczko said that Commissioner Magwood may not have understood what the CR guidance meant and if he did not understand that was not his fault. He then spoke with Commissioner Ostendorff about the CR budget guidance memorandum. Commissioner Ostendorff immediately understood and was very unhappy about it. Chairman Jaczko spoke with Commissioner Ostendorff twice on the matter during which Commissioner Ostendorff urged him not to publish the memorandum.

Chairman Jaczko told OIG that prior to the issuance of the CR budget guidance memorandum, he had two meetings with the staff about moving to close-out, and that they would stop working on the SER. In doing so, they would capture the information and publish a TER, and they were not going to be reporting findings for a project that they were no longer working on formally for licensing review. According to the Chairman, this was the general understanding long before October 1.

Chairman Jaczko related he had discussions with two Commissioners concerning the publication of the CR budget guidance memorandum and its result being to stop the publication of Volume 3 of the SER. He believed these discussions were subsequent to the memorandum's publication. During these discussions, the Commissioners asked what impact the CR budget guidance memorandum would have on the SER, and the Chairman responded that publishing the SER volumes was not something they were going to be doing as part of this close-out. Furthermore, he told OIG that if his colleagues did not understand, there was only so much he could do to explain. Chairman Jaczko related that these were heated, intense discussions, but his colleagues had given him a commitment to support him on the CR budget guidance memorandum.

Chairman Jaczko said the intent of the budget was that when DOE submitted its motion to withdraw, the license application would be withdrawn. Therefore, submittal of the motion was the triggering factor and not the actual withdrawal. In hindsight, the language in the Congressional Budget Justification, given what has materialized in the adjudicatory process,

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appears to make it seem different that what it really meant. The intent as he understood it was that DOE would submit its motion to withdraw and that would be the agency's trigger to begin closing the program. That has always been his intent, and he could not read the budget any other way. Chairman Jaczko said that while the Commission composition has been different at various decisionmaking points during the FY 2010, FY 2011, and FY 2012 budget processes, in each case the Commission at the time has approved the budget documents currently in place. These budget documents show the agency's shift to program close-out, and include the FY 2012 Congressional Budget Justification, which the current Commission approved, and which reflects close-out of the program without conditioning it on a motion to withdraw. Chairman Jaczko said even if one read the FY 2011 Congressional Budget Justification to mean that the Commission should not have closed out the program at the beginning of FY 2011, waiting to see the completion of the motion to withdraw, he made the decision at the beginning of the fiscal year. He told the staff to "follow the guidance in the FY 2011 budget."

Chairman Jaczko said he asked the General Counsel about the significance of the language (withdrawal or suspension) in the FY 2011 Congressional Budget Justification, and the General Counsel told him that one of the Commissioners had made the point that the document does not mean begin close-out. Chairman Jaczko asked the General Counsel whether that viewpoint was consistent with the General Counsel's interpretation of the budget, and the General Counsel said "no." Chairman Jaczko said the withdrawal or suspension language in the Congressional Budget Justification was odd and probably got inserted through the Commission's editing process. He clearly missed it and it was not the intent of what they were doing. According to Chairman Jaczko, the language was irrelevant because if a withdrawal request came in, there was no way the Commission would disapprove it, and in his mind it did not change the operative nature of what the budget did. Moreover, the Congressional Budget Justification had to get approved by OMB, which missed it. He commented that the passback letter to OMB laid out the trigger as being the withdrawal request, which put them on the path to close-out.

He told OIG that the closure of the High-Level Waste Program was not an endeavor he accomplished through his executive authority over budget that he could not accomplish through the adjudicatory process. He commented that they were closing out the review in budget space, and that what was not understood was they had not resolved the adjudicatory matter.

Coordination with U.S. Government Accountability Office

OIG coordinated with the U.S. Government Accountability Office with regard to the allegation that the NRC Chairman had exceeded his authority during the CR period by stopping the review of the DOE license application for a geological repository at Yucca Mountain, NV. GAO declined to provide a formal legal opinion regarding this issue as it was too closely related to an authority matter rather than an appropriations matter.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION*Coordination with U.S. Office of Management and Budget*

OIG coordinated with the Office of Management and Budget (OMB) regarding how it was determined to appropriate \$10 million for NRC's High-level Waste Program for FY 2011. OMB advised that it does not disclose this type of information in accordance with Circular A-11, paragraph 22.1, "Confidentiality of budget deliberations."

B. OIG Review of SER Issue

OIG learned that between April and May 2010, NMSS staff informed the Chairman that they were ahead of schedule with their work on the SER volumes, and they inquired whether they should attempt to issue the volumes at earlier dates than those which had been established in March 2010. The Chairman responded in a June 2010 memorandum that they should not expedite issuance of the reports, but should instead maintain the timeline that had been announced publicly in March 2010. According to that timeline, Volume 1 would be issued in August 2010, and Volume 3 in November 2010. Volume 1 of the SER was issued as scheduled; however, in October 2010, at the start of the new fiscal year, Chairman Jaczko directed staff to stop working on all SER volumes. Subsequently, the Chairman gave direction to the staff to prepare a document for public release that captures the knowledge gained through the NRC's technical review of DOE's license application but would not contain any of the staff's findings and conclusions.

NRC's Plans for Developing SER To Meet NWPA Review Requirements

Completion of NRC's technical review of DOE's license application and subsequent issuance of the SER are governed by the schedule established in 10 CFR, Part 2, Appendix D, which requires the SER be completed no later than 18 months following NRC's issuance of a Notice of Hearing regarding DOE's license application. The schedule in 10 CFR Part 2, Appendix D, codifies an NWPA stipulation that NRC issue a decision approving or disapproving the issuance of a construction authorization no later than 3 years after the date of the submission of an application for authorization to construct a geologic repository. The NWPA additionally allowed NRC to extend the 3-year deadline by no more than 1 year. NRC published the Notice of Hearing in the Federal Register on October 22, 2008, starting the 3-year clock. The date corresponding to the 18-month deadline for issuance of the SER was April 23, 2010. Originally, NRC planned to meet the April 23, 2010 deadline to complete and issue the SER; however, due to budgetary constraints, NRC indicated in July 2009 that it would not be able to issue the SER in accordance with the 10 CFR Part 2, Appendix D, schedule. It was at this point that the agency announced the SER would be issued serially in five volumes. As of July 2009, Volume 1 (General Information) was projected to be issued in March 2010, and Volume 3 (Review of Repository Safety after Permanent Closure) in September 2010; at the time, NRC was unable to estimate completion dates for the remaining three volumes.

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On January 27, 2010, NRC revised its schedule regarding issuance of SER Volumes 1 and 3; SER Volume 1 was now scheduled to be issued in August 2010 and SER Volume 3 in November 2010.

On March 30, 2010, the EDO sent a memorandum to the Commission informing the Commission of the staff's plans regarding the High-Level Waste Program, including its review of DOE's application, in light of the Administration's plan to terminate the Yucca Mountain repository program and DOE's March 3, 2010 request to withdraw its repository application. This memorandum proposed to the Commission that in light of the President's FY 2011 budget and assuming Congress provided no additional funding or direction to the contrary, the staff would continue the technical review of DOE's application and SER preparation until FY 2010 funds were exhausted. The memorandum also informed the Commission that as of the end of February 2010, DOE had responded to all of NRC's requests for additional information and, at that time, the NRC staff had not identified a need for additional information from DOE to complete the SER volumes. The memorandum included a projected schedule for completion of all SER volumes. Volumes 1 and 3 were still on schedule to be issued in August and November 2010, respectively, and all of the remaining volumes would be issued by the end of March 2011. OIG learned that between May and June 2010, the Commission was informed that SER Volumes 1 and 3 were ahead of schedule; however, on June 11, 2010, Chairman Jaczko sent a memorandum to the EDO titled, "Schedule for HLW SER," stating that the staff should not attempt to issue the volumes ahead of the projected schedule provided in the EDO's March 30, 2010 memorandum. The Chairman wrote:

I believe it is in the best interests of the agency not to alter the schedule for the completion of SER volumes at this time, but instead to maintain the predictable schedule previously provided to the Commission in March 2010, regarding plans for the High-Level Waste Repository Program. The agency's overall resources would be better utilized by maintaining the current schedule. Therefore, the information in Volume 1 of the SER should be finalized and presented no earlier than August 2010, and subsequent volumes consistent with and not earlier than the schedule provided to the Commission in March 2010.

In accordance with the March 2010 schedule for SER volume publication, Volume 1 was issued on August 23, 2010. No additional volumes have been issued.

Interviews of Senior Staff on SER Issue

The NMSS Director said that prior to the Chairman's June 11, 2010 memorandum instructing staff to maintain the March 30, 2010 SER publication schedule, she had attended meetings with the Chairman, EDO, and DEDO for Materials, Waste, Research, Tribal and Compliance Programs concerning the status of the staff's progression on the SER volumes. She said she informed the group that the staff was well ahead of schedule with regard to completing the SER. She said the group discussed the appropriateness of slowing down the work and that she and the EDO specifically indicated to the Chairman that it would be contrary to the agency's values

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of openness and transparency to do so. She recalled that the Chairman thanked them for their views and ended the discussion. The NMSS Director said she believed the motivation to slow down the work was related to the DOE's request to withdraw its license application and the formulation of the Blue Ribbon Commission to look at the national policy on waste. She had been told that if NRC were to publish the SER volumes, it would indicate that NRC was "out in front" of the Administration with regard to the disposal of high-level waste. The NMSS Director told OIG that she received SER Volume 1 for review, concurrence, and authorization to publish on June 24, 2010, and Volume 3 for review, concurrence, and authorization to publish on July 15, 2010. The NMSS Director believed that minimal resources were needed to complete the review process and issue Volume 3. She also commented that by September 30, 2010, NRC had all the information it needed from DOE to complete the SER. The NMSS Director recalled that prior to October 1, 2010, the DEDO directed that her staff would begin transition to closure on October 1.

The DEDO for Materials, Waste, Research, Tribal and Compliance Programs told OIG that when they met with the Chairman in June 2010 to discuss the staff's progress on the SER, the Chairman already knew that as of October 1, 2010, when the agency moved into the new fiscal year that he would be closing down the license application review. The DEDO said the reason that he and the NMSS Director went to meet with the Chairman was to inform him that they could publish the volumes ahead of the designated schedule if the Chairman preferred. However, the Chairman's preference was to stick to the original schedule. The DEDO said the practical effect of the Chairman's June memorandum was that it prevented the staff from issuing Volume 3 should it have been finalized prior to October 1.

The Deputy Division Director for the Licensing and Inspection Directorate, Division of High-Level Waste Repository Safety, NMSS, told OIG that Volume 3 of the SER was nearly finished, minus the office director comments and concurrence and review by the Office of the General Counsel (OGC). In early October 2010, staff were in the process of resolving OGC comments on Volume 3. He and the Deputy Division Director for the Technical Review Directorate had personally reviewed Volume 3 and they were both comfortable with the insights gained from the information DOE had provided. The Deputy Division Director for the Licensing and Inspection Directorate said the direction to stop working on the SER came directly from the Chairman, who met with the NMSS staff in early October 2010. The Chairman explained that the budget drove his decision and that the NRC General Counsel agreed with his decision. The Chairman did not indicate for the staff to shut down in a way from which they could not recover. Instead, the Chairman conveyed that the shutdown should take place in a reversible manner so that, if needed, they could resume their review activities.

The Deputy Division Director for the Licensing and Inspection Directorate also explained that an SER is a licensing product based on regulatory requirements, and a TER is a technical review without licensing requirements. He advised that a TER has scientific value, but little licensing value.

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The EDO told OIG that he had the impression that Volume 3 was ready for publication in late summer 2010. He recalled that it was around the period of the election and that they were going to wait until elections had concluded to publish the volume. He said the staff had advised the Chairman that the work on Volume 3 was done, and the Chairman said to maintain the original schedule because earlier publication of the volume could be interpreted as trying to influence the decision on whether DOE was authorized to withdraw its license application.

The Assistant General Counsel for High-Level Waste, Fuel Cycle & Nuclear Security, OGC, said that the completion status of Volume 3 was open to interpretation. She said that as of July 15, 2010, Volume 3 had been provided to the NMSS Director and was reported to be substantially complete. However, the document was undergoing additional editing and formatting, including a final quality control check, to assure appropriate nomenclature, proper numbering, and sequencing, and other minor administrative changes that may be necessary to ensure completeness and accuracy. OGC had been asked to review the document and indicate, by August 25, 2010, whether they had any legal objections regarding the document.

The Chairman's Chief of Staff recalled that when the Chairman was informed by NMSS staff that they were ahead of schedule with regard to the SER volumes, the Chairman did not think it best to change the timing that had been publicly announced as to the publication dates. The Chief of Staff said that Volume 3 had not undergone senior management or General Counsel review and was a predecisional document. His understanding was that the NMSS Director had not completed her review of the document, and that as of the new fiscal year NRC had transitioned to a categorically different activity (close-out) for which \$10 million had been allocated. Based on this transition, the agency needed to use the resources for that specific purpose.

The General Counsel acknowledged that under the NWPA, the NRC was to determine up or down within 4 years from the DOE application acceptance date on the license application. However, many factors have come to bear, such as a non-willing applicant and an unfunded program. This is budget reality and he would argue this course is a prudent way; if Congress decided to fund this project, the agency is actually in a better position to resume than shutting it off all together. He did not believe that the Chairman had put the Commission in jeopardy because Congress has not properly funded the program to meet its obligations. He further advised the activities and authorizations outlined in the Nuclear Waste Policy Act are subject to appropriations. He stated that "unless Congress appropriates money, you can't do any of those things."

Interviews of Commissioners on SER Issue

Commissioner Ostendorff recalled Chairman Jaczko informing him, during a routine periodic meeting on June 8, 2010, that the Chairman was considering whether to provide direction to NMSS to delay issuance of SER Volume 1, which was ready to be issued 2 months ahead of its scheduled issuance in August 2010. The Chairman asked him for his thoughts on the matter and said he thought it would look "funny" for the SER to be issued in the middle of the ongoing

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high-level waste adjudication. The Chairman told Commissioner Ostendorff he was directing this action in his capacity as NRC's principal executive officer and that it was not a policy matter. Following the meeting, Commissioner Ostendorff called the Chairman to tell him he strongly disagreed with the Chairman's proposed course of action. Commissioner Ostendorff thought it was a "big mistake" to provide direction to the staff to slow down the SER review, and that it would look very bad for the Chairman to interfere with the staff's activities, particularly in light of the ongoing high-level waste adjudication. Commissioner Ostendorff cautioned the Chairman that he would likely have to deal with any accusations of tampering with the proceedings if word got out that he had provided such direction.

Commissioner Ostendorff said that on June 11, 2010, during a routine periodic meeting with the General Counsel, he discussed his concerns with the Chairman's proposed direction on delaying issuance of SER Volume 1. The General Counsel told Commissioner Ostendorff that it was his opinion that the direction was not legally objectionable, but that he did not provide an opinion to the Chairman on the policy implications. The General Counsel told Commissioner Ostendorff that it was his experience that there were certain issues that the Chairman does not want to hear from him on. This conversation left him with the impression that there was possibly not an open environment for OGC to provide unfiltered advice to the Chairman without fear of retribution.

Commissioner Ostendorff was aware that the draft SER Volume 3 had been sent to the NMSS Director for review in July 2010. On October 1, when the Chairman informed Commissioner Ostendorff of his plans to issue the CR budget guidance memorandum and to remove the findings from SER Volume 3 prior to issuance, the Commissioner expressed his concerns about not completing SER Volume 3 as previously planned by the staff. Commissioner Ostendorff's concerns included censoring staff technical work already completed and the fact that the actions directed to the staff were directly related to the outcome of the high-level waste adjudication that was currently before the Commission but had not yet been decided.

Commissioner Svinicki advised OIG that she considered the issuance of the SER volumes to be a policy matter for Commission involvement, particularly in light of the Chairman's unilateral direction in June 2010 to direct agency staff to issue SER Volume 1 no earlier than the staff's scheduled date of August 2010. She recalled advising against that course of action when the Chairman informed her of his intent to issue that direction. According to Commissioner Svinicki, she voted to approve Commissioner Ostendorff's COM because she supported finalizing and issuing Volume 3.

Commissioner Magwood advised that the Chairman's actions relative to Volume 3 of the SER may not, strictly speaking, be illegal from the perspective of appropriations and CR law, but his actions under the Commission's organic statutes present a different picture. Under the Commission's statutes and standing procedures, policy determinations are made by majority vote of the Commission, not by the unilateral action of the Chairman. According to the Commissioner, the Chairman's specific direction to the staff regarding implementation of the CR

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(e.g., the decision not to issue SER Volume 3 as planned and previously communicated to the Commission) was a significant policy shift, not merely administrative guidance, and therefore was not proper.

Former Chairman Klein said that NRC is under a legal obligation to review DOE's application but he recognized that the agency needs the funding to complete the task. He recalled once making the point during a speech that guidance was needed from Congress on this matter. He thought it was inappropriate for Congress not to fund NRC for a law it had passed, and that the agency had to meet. He said because NRC had that law, and the requirement, but not the funds to carry it out, the agency needed relief. He said, "Either we needed to get the money to do it, or they needed to give us relief from it. And they have not given us relief from it."

Interview of Chairman on SER Issue

Chairman Jaczko told OIG that he did not want NRC to publish Volume 3 early because it could give an impression that the agency was trying to rush information out before it was actually complete, knowing the project was terminating. This would create challenges for NRC from a public communications perspective; it would look political if they moved forward in this way. He said that as Chairman, it is his responsibility to manage the agency's workload and workflow with regard to scheduling. Shortly after the CR budget guidance memorandum was published, he personally directed the staff that the agency would publish Volume 3 as a TER that would reflect where they were in the review process, but would not reflect NRC's findings. He said the staff's work on the SER would be preserved as an internal non-public document in ADAMS, the agency's document management system. Further, he never directed anyone to destroy or delete the document as the hearings have not ended. Chairman Jaczko said the agency has an obligation to preserve the document if hearings are to resume.

Chairman Jaczko advised that his office had contacted several members of Congress who told them there was nothing illegal or wrong with what he was doing in relation to the CR guidance and it was perfectly consistent with appropriations. The commentary and correspondence he received reflecting congressional dismay against his actions were solely political in nature. The agency had a budget from OMB that reflected "do close-out" and Congress had not passed an appropriation which was how they indicate to agencies what to do with their funding. He told OIG that several times, Congress passed a CR and had the opportunity to specifically direct the agency not to proceed with close-out activities but that several CRs had been passed with no direction to NRC to do anything different. He related the fundamental obligation for the agency was to go with the lower values of what has been approved by the House and the Senate. This was reflected in OMB Circular A-11. The FY 2011 budget that was approved by the Senate and the House for NRC was \$10 million for closure activities. Chairman Jaczko said that as the head of the agency, he was bound by the agency's budget. He also commented that the activities in the NWPA were subject to appropriations. For example, there are provisions in the NWPA that say NRC is supposed to finish its licensing review within 3 years. According to the Chairman, "that language is fairly meaningless

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because it has no enforcement mechanism. It does not say what happens if we miss that deadline. And clearly, based on the \$29 million that we were getting in FY 2010, we were not going to meet the 3-year deadline."

C. Commission Voting on ASLB Decisions

OIG learned that the Office of the Secretary (SECY) did not enforce adherence to the Commission's adjudicatory voting process with regard to SECY-10-0102 and generally does not enforce the voting process to facilitate completion of adjudicatory matters. Although SECY staff attempt to enforce the process, their success is dependent on whether and how the Chairman and Commissioners respond to their attempts. According to NRC's General Counsel, the Commission's procedures are guidelines that have been developed based on practice but they are not requirements.

Commission Procedures

NRC's *Internal Commission Procedures* explain that Commission decisionmaking is accomplished through voting at scheduled Commission meetings, through notational voting on prescribed vote sheets, and by orally affirming a notational vote at an affirmation session. Appendixes 4 and 5 of the procedures address the basis for determining voting results and how to resolve a 2-2 vote. According to the procedures, votes from at least a quorum of three Commissioners are required to act, and action is based on the majority of those participating. As a general matter, requests for Commission action will be denied if the Commission vote is 2-2.

The *Internal Commission Procedures* also describe Commission voting on adjudicatory SECY papers¹² such as SECY-10-0102 and for holding the subsequent affirmation session vote; however, they do not provide details or direction on the process that occurs between the completion of an adjudicatory SECY paper vote and the conduct of an affirmation vote on the matter. OIG learned about the latter process through an interview with a SECY Technical Advisor who tracks adjudicatory SECY papers for the Commission.

According to the *Internal Commission Procedures*, Commissioners are expected to vote on adjudicatory SECY papers no later than 10 business days after receipt of the paper. The procedures state that when a majority of the Commission has voted, a request for an extension of time to vote beyond the 10 business day voting period or a request to delay the affirmation of the vote should be granted only by a majority of the Commission. Per the procedures, it is the Secretary of the Commission's responsibility to schedule a weekly affirmation session. It is also the Secretary's responsibility to, within 48 hours of the issuance of an adjudicatory SECY paper,

¹² The *Internal Commission Procedures* state that written issue papers, referred to as SECY papers, are the "primary decision-making tool of the collegial Commission." These papers are submitted by the Office of the Executive Director for Operations, the Chief Financial Officer, or other office directors reporting directly to the Commission.

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notice the affirmation of the paper so that the affirmation will be held at the earliest available session following the close of the 10-day voting period unless a majority of the Commission has advised that the affirmation should be set for a later date. Although the *Internal Commission Procedures* state that it is the Secretary's responsibility to schedule these sessions, they also state that in order for Commissioners to vote orally at meetings, the Chairman must call for the vote.

A SECY Technical Advisor told OIG that although the procedures state that Commissioners are expected to vote within 10 days after the issuance of an adjudicatory SECY paper, in practice, the significant deadline in the process is the point at which the majority of Commissioners have voted. This is the point that the Technical Advisor tracks for adjudicatory SECY papers because at this point it is required that Commissioners who have not voted either submit a vote or request an extension to which a majority of other Commissioners must agree. The Technical Advisor said that he sends e-mail notices (addressed from the Secretary of the Commission) to the Commissioners who have not voted to request that they either vote or ask for an extension. If a Commissioner requests an extension, the Technical Advisor said he polls the other Commissioners to see if a majority agree to grant it. The Technical Advisor, who has been tracking Commission voting on adjudicatory matters for more than 20 years, could not recall any occasion where an extension request was denied by a Commissioner.

The Technical Advisor explained that after he has received all of the Commissioners' notational vote sheets on an adjudicatory SECY paper and the attached ASLB order, he drafts an affirmation notice that is high-level in nature and is used during the affirmation voting process. He said the affirmation notice simply provides the outcome of the vote; thus, when all Commissioners vote "aye" during the affirmation vote, they are voting to note their agreement with the language in the affirmation notice. In contrast, the vote sheets note whether a Commissioner is in favor of the order, against it, not participating, or abstaining and will sometimes include comments explaining why they are for or against, or suggesting modified language for the order.

The Technical Advisor also explained that OCAA may need to revise the order before an affirmation vote can be held if Commissioners indicate in their notational vote sheets that revision is needed. The Technical Advisor said that OCAA works with lawyers in the Commissioner offices to make the modifications requested and obtain their concurrence on the updated language. The length of time it takes for OCAA to make the Commissioners' changes in the order and obtain their concurrence on the update varies, depending on the level of change needed. The Technical Advisor said an affirmation vote is not held until all of the Commissioners are satisfied with both the affirmation notice and the order.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION*OIG Review of Commission Adherence to Procedures*

OIG reviewed the Commissioners' voting process associated with SECY-10-0102¹³ and learned that the *Internal Commission Procedures* were not followed relative to voting deadline, extension requests, or polling of other Commissioners to determine whether they agree with extension requests. As noted in section I of this report, OCAA issued SECY-10-0102 to SECY on August 10, 2010, and Commissioners were asked to provide completed vote sheets and comments to SECY by August 25, 2010. The paper was to be scheduled for an affirmation vote at an open meeting once all votes were received.

Despite the August 25, 2010 voting deadline, voting was not complete until Chairman Jaczko submitted his second vote (approximately 6 weeks after the majority of Commissioners had voted) on October 29, 2010. The voting process proceeded as follows:

Commissioner and Action	Date
Commissioner Apostolakis announced he would not participate	August 10, 2010
Commissioner Svinicki voted	August 25, 2010
Chairman Jaczko provided initial vote	August 25, 2010
Commissioner Ostendorff voted	August 26, 2010
Chairman Jaczko retracted initial vote	August 30, 2010
Commissioner Magwood voted	September 15, 2010
Chairman Jaczko voted for second time	October 29, 2010

OIG reviewed SECY documents associated with SECY-10-0102 and learned that the Commission Secretary sent an August 27, 2010 e-mail notice advising Commissioner Magwood to vote or request an extension to vote, but the request was withdrawn after Chairman Jaczko retracted his first vote. This occurred after the first time the majority of Commissioners had voted. After Commissioner Magwood voted on September 15, 2010, now constituting a majority, the Secretary sent an e-mail to Chairman Jaczko requesting his vote or an extension request. The e-mail stipulated absent the Chairman providing a vote or request for an extension, which must be approved by a majority of the Commission, it would be presumed, in accordance with the Commission's rule of procedure, the Chairman would not be participating in the action. There were no additional documents indicating that the Secretary followed up with the Chairman or his office. However, OIG identified (1) a September 16, 2010 e-mail from the Chairman's Chief of Staff to the Chairman recommending that the Chairman never request an extension on the Yucca Mountain matter and (2) an October 6, 2010 e-mail from the Secretary to NRC's General Counsel stating that the Chairman's Chief of Staff had indicated that the Chairman would vote the following week.

¹³ Because this remains an open adjudicatory matter before the Commission, OIG could only report matters of process and not of substance.

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OIG reviewed 13 other adjudicatory SECY paper files¹⁴ to assess whether Commission voting and polling procedures were followed in connection with these documents. OIG sought to determine whether (1) memoranda were sent to Commissioners reminding them to vote after a majority of Commissioners had voted, (2) Commissioners requested extensions or voted timely in response to the e-mail prompt, and (3) polling of other Commissioners occurred as warranted. OIG's review found that procedures were not followed in connection with 7 of the 13 files reviewed. In three of the seven cases, memorandum prompts should have been sent after the majority voted, but were not. In three other cases, memorandum prompts were sent; however, extension requests and polling did not occur. In one case polling was initiated but not concluded.

OIG also learned that 2 days after the Chairman voted on SECY-10-0102, the OCAA Director provided the Commission with a draft affirmation order detailing the status of the Commission's votes. Although the notational voting process associated with SECY-10-0102 was complete as of October 29, 2010, as of the date of this report the Commission has not held an affirmation vote on the matter and the draft order continues to sit in deliberation before the Commission for affirmation.

OIG Interviews of Agency Officials Concerning Commission Procedures

The Secretary told OIG that she uses a "voting notice document" to prompt Commissioners who have not yet voted on an adjudicatory matter after the majority has voted, and that she sent such a notice to the Chairman concerning SECY-10-0102 on September 16, 2010. She said that although the Chairman never formally responded to the notice with a request for an extension to vote on SECY-10-0102, he told her on several occasions that he planned to vote. She never documented these exchanges, and did not proceed with the polling of other Commissioners to see whether they agreed with the delay. She recalled having conversations with some of the Commissioner staff members prior to Chairman Jaczko's second vote wherein they asked her to draft an affirmation statement even though Chairman Jaczko had not yet voted. She did not do this because the Chairman had told her he would be participating in the matter and because, based on discussions with one Commissioner and several Commissioner staff members, she believed that not all of the Commissioners who had voted were ready to affirm their votes during an affirmation session. The Secretary also said that while the *Internal Commission Procedures* direct her to schedule affirmation votes at the earliest opportunity after the 10-day voting period, Chairman Jaczko has wanted to make sure that all Commissioners are ready to affirm their votes before an affirmation session is scheduled.

The OCAA Director told OIG that in accordance with their process, following the Chairman's October 29, 2010 vote on SECY-10-0102, she prepared a draft affirmation order for circulation via e-mail that indicated the status of the votes at the completion of the voting process. She circulated the draft via e-mail to all of the Commissioners on November 1, 2010, and was subsequently called to the Chairman's office, where an OGC attorney and the Secretary were

¹⁴ Files corresponded with adjudicatory SECY papers issued between March 2008 and August 2010.

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also present. The OCAA Director said the Chairman was animated and expressed displeasure that she had circulated the document. She told him she had done this as part of the normal process of circulating the draft decision. She was surprised and shaken up by the Chairman's manner and that he had never been angry with her before. The Chairman asked her something like, "Do you think this was a helpful thing to do?" She responded that she thought it was and he told her he was working with the Commissioners to settle the matter and to "just stay out of it." In hindsight, the OCAA Director said the Chairman may have felt that in circulating the draft decision, she did not give the other Commissioners time to consider the content of the Chairman's vote. However, at the time, she thought she was doing the correct thing by being prompt with a matter that was of interest to the Commission.

A majority of Commission staff members interviewed told OIG that with the exception of SECY-10-0102, the *Internal Commission Procedures* are generally followed. All of the staff members were aware that the procedures directed extension requests to be made and that extensions needed majority Commission approval. The Chairman's Chief of Staff acknowledged that although he was aware of the procedures concerning extension requests, he sent an e-mail to Chairman Jaczko recommending that the Chairman never ask for an extension to vote in connection with SECY-10-0102. A Commissioner's Chief of Staff asked the Secretary how her office would proceed given that a majority of the Commissioners had voted. The Secretary responded that she knew that one Commissioner would not proceed to affirmation before the Chairman voted, so she would not initiate measures to move the issue. According to this Chief of Staff, the Secretary was in a difficult position because she feared being "chewed out" by the Chairman if she were to proceed to affirmation before he cast his vote. A Commissioner's Legal Advisor told OIG that the Chairman wanted matters pertaining to the affirmation to be decided prior to scheduling an affirmation session and that he would not support the Secretary in moving to affirmation until that time.

The General Counsel told OIG that the *Internal Commission Procedures* should generally be followed, but that there are circumstances that require deviations, and the procedures themselves are not binding law. The procedures are a reflection of decisions among the Commissioners of how to handle and process certain matters, especially those matters identified in the Energy Reorganization Act and the Reorganization Plan. With regard to adjudicatory affirmation voting, the Commission needs to have a majority willing to go to affirmation. Normally, the Secretary would poll members to see if they were ready to go to affirmation; however, he said that if there is no consensus it is hard for the Secretary to go forward with a draft affirmation notice or order to reflect a consensus position. The General Counsel said that this is the situation with the high-level waste matter. He acknowledged that this matter has sat in abeyance with a draft affirmation order before the Commission since November 1, 2010. He said that as a theoretical matter, this could "rest in limbo" until NRC is posed with a forcing function, such as being party to litigation against the Government. He told OIG there have been matters previously before the Commission in appeal status that have gone unresolved for a year or longer.

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION*Interviews of Commissioners Concerning Commission Procedures*

Commissioner Ostendorff told OIG he queried Chairman Jaczko about when he planned to vote on SECY-10-0102 during meetings he had with the Chairman on September 9, September 14, October 5, October 19, and October 27, 2010, and the Chairman always responded that he would vote. Commissioner Ostendorff said Chairman Jaczko offered different reasons for not voting. For example, Chairman Jaczko told him he was concerned that a 2-2 vote would leave the ASLB "in limbo." He also told Commissioner Ostendorff that he would not take action until a majority of the Commission agreed to suspend the ASLB's adjudicatory proceedings. Commissioner Ostendorff disagreed with the Chairman's view that a 2-2 split could leave the matter unresolved. Rather, after discussions with OGC, OCAA, the Chief Administrative Judge of the ASLB, and Commissioner Ostendorff's legal counsel, Commissioner Ostendorff concluded that based on the *Internal Commission Procedures*, a 2-2 split would uphold the ASLB's decision. Commissioner Ostendorff communicated this view to the Chairman.

Commissioner Svinicki said she believed it was important for the Commission to act on the adjudicatory matter to resolve the legal question of DOE's authority to withdraw.

Commissioner Magwood advised that subsequent to the Chairman initially casting his vote on the matter, the Chairman allegedly withdrew his vote asserting he had done so as to afford Commissioner Magwood time to prepare a vote. Commissioner Magwood advised this representation was not accurate and he had not asked the Chairman to assist or to remove his vote on his behalf.

Interview of Chairman Concerning Commission Procedures

Chairman Jaczko told OIG he did not recall the e-mail from his Chief of Staff advising him not to request an extension to vote on SECY-10-0102, and that he did not realize that an extension was required on adjudicatory matters if a vote was not cast within a 10-day period. He said that the Commission does not always act in accordance with the procedures. For example, the procedures say that the Commission votes on matters within 10 days of receiving them. Yet, he noted, the Secretary waits until three people have voted to issue notices to other Commissioners that they need to act. He said the Commission procedures are a guideline, and not absolute rules. However, he said he did at one point talk to the Secretary, who told him that he needed to request an extension, but he responded that he was getting ready to vote and, furthermore, told the Secretary she needed to proceed however she wanted to proceed. Chairman Jaczko told OIG that while some people have an impression that he is purposely holding up the affirmation vote, this is not the case. Instead, the reason the Commission has not held an affirmation vote on the Yucca Mountain matter is that the Commission has not come to majority agreement on the affirmation notice. He said NRC's governing statute directs that Commission action is accomplished by majority vote. According to Chairman Jaczko, his practice is to go to affirmation once the Commission is in agreement about the language in the

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affirmation notice even though the procedures describe a process wherein the affirmation is scheduled once the votes are in. He said that has proven to be an embarrassing situation because "voting does not end the process. It's just the beginning of the process for us."

Chairman Jaczko advised that all of the Commissioners agreed to the practice of proceeding to affirmation only after everyone agrees to the affirmation notice and "there has really been little discussion."

D. Information Flow/Work Environment

During the course of the investigation, a number of interviewees conveyed their perception that Chairman Jaczko controls and restricts the information available to his fellow Commissioners and noted concerns about his interpersonal style. Senior officials, managers, and staff provided examples that they believed illustrated the Chairman's failure to share with his fellow Commissioners information needed to support their fully informed decisionmaking. Examples included the CR budget guidance memorandum described earlier in this report, the FY 2012 budget process, the Commission agenda planning process, and the Chairman's involvement in determining what constitutes a policy versus an administrative matter. In addition, a number of interviewees described instances of behavior by the Chairman that they viewed as unprofessional or manipulative. Examples included the Chairman's use of foreign travel or threats to contact members of the Administration as means of persuading his fellow Commissioners to support him on issues, and displays of anger towards individuals whom he does not view as supportive.

The Chairman defended his management style with regard to information flow as aligning with the division of Commission and Chairman responsibilities established by the Reorganization Plan and as necessary for efficiency and effectiveness. He acknowledged using forceful management techniques to accomplish his objectives but maintained that these techniques were necessary to facilitate the work of the Commission.

The FY 2012 Budget Process

OIG learned from Commissioner chiefs of staff and legal advisors that, historically, when the NRC Chairman presented his/her budget estimate to the other Commissioners, the Chairman included the staff's independently developed "Program Priorities and Considerations" document. This is a spreadsheet, prepared by staff, that presents each division's plans and priorities, which, historically, the Chairman has used to develop his/her budget proposal based on the staff's considerations. OIG learned that the FY 2012 process differed from past practice in that:

1. The Chairman personally met with division directors regarding their funding and programs and provided direction and priorities for the agency. Subsequently, the staff formulated their requirements for funding and programs based on the Chairman's direction, which was then incorporated into the Chairman's budget estimate.

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2. The Chairman's budget estimate was submitted to the Commission for its consideration without fundamental supporting documents developed by the staff.

The majority of Commissioner staff members and Commissioners indicated that this process caused problems in that the Commission could not assess the differences between the staff's projected needs and priorities and those of the Chairman. Furthermore, staff explained that the Chairman directed that if the Commissioners wanted to make inquiries to division directors regarding their funding needs and priorities, the requests needed to be funneled through the Chairman's office. Office responses, in turn, were submitted to the Chairman's office, and OIG learned that responses were either edited or not provided back to the requestor. OIG also learned that all of the Commissioner offices were able to obtain various versions of the "Program Priorities and Consideration Documents" through personal connections that Commissioner office staff had with NRC staff. However, the Commissioners remained unable to distinguish the staff's priorities from the Chairman's priorities due to the Chairman's process for developing the budget.

The CFO told OIG that the Chairman's FY 2012 budget process, wherein the Chairman had meetings with staff to discuss priorities directly before the offices developed their priorities document, was much quicker than the previous budget process. However, he said, the problem was that the Chairman did not provide the staff's supporting documents to the Commission. The CFO said he raised this issue to the Chairman's Chief of Staff and conveyed that without the supporting documents it would be difficult for the Commission to decide on a budget. The Chairman's Chief of Staff responded that the Commission did not need that level of detail, that this was the Chairman's budget, and that all inquiries to the CFO from the Commission about the budget should be cleared with the Chairman prior to providing a response.

The EDO told OIG that the Chairman did not want any differences between his budget and staff's budget and saw it as his budget proposal. The Chairman also wanted the opportunity to review and change any of the staff's responses to the Commissioners' questions.

An OEDO manager told OIG that he was familiar with the issue of information from the staff to the Commission being edited by the Chairman before it was provided to the Commission. He said the Energy Reorganization Act addressed this issue and that it could be debated in two ways. One way would be to edit information provided by the staff, and the other is to be passive and just present what the staff has identified on a matter. He said he discussed this matter with the General Counsel, who said the Chairman had the authority to edit information that was to be provided to the Commission. The OEDO manager said the Chairman did not believe there should be two separate budget proposals (Chairman's budget and staff budget). He said the Chairman viewed himself as the head of the agency and felt that there should be just one budget – the staff's proposal reviewed by the Chairman – presented to the Commission for its consideration.

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Chairman Jaczko told OIG that he was closely involved in the budget process as it is his responsibility to present the budget to the Commission and he was entitled to develop the budget however he wanted. He said he chose a method to help the staff shape a budget that would be more successful in getting through the Commission. He believes that this is what occurred with regard to the FY 2012 budget proposal. He said that the budget was presented 3 weeks earlier than usual and went through the Commission with almost no real change. He said he had assumed he did not have to provide the Commission with the "Program Considerations and Priorities" documents, but had since learned from the General Counsel that he had been incorrect. He said he now understood that once the budget was developed and presented to the Commission, the Commissioners were entitled to some of the draft documents.

Agenda Planning Process

According to the *Internal Commission Procedures*, policy, rulemaking, and adjudicatory matters, as well as general information, are provided to the Commission for consideration in documents referred to as SECY papers. There are four categories of SECY papers. Commission meeting papers present a major issue on which collegial deliberation and vote at a Commission meeting, usually in a public session, is anticipated. Notation vote papers present an issue requiring consideration by the Commission or consultation with the Commission prior to action by the staff, but not requiring collegial deliberation among Commissioners or a formal vote in a meeting, thereby lending themselves to a written notation process. Affirmation papers convey Commission business that does not require deliberation among the Commissioners in a meeting mode, but must be voted on by the Commissioners in each others' presence. Information papers provide information on policy, rulemaking, or adjudicatory issues. These papers are purely informational and should not assume or request any action by the Commission.

The *Internal Commission Procedures* also describe monthly agenda planning sessions during which the Commission reviews and approves the Chairman's proposed meeting agendas that he has developed with the SECY and representatives from OGC, EDO, and the Office of Congressional Affairs. The procedures state, "In recognition of the collegial process, an individual Commissioner's request that a meeting be scheduled will be granted unless a majority of the Commission disapproves the request."

During this investigation, OIG learned that the process by which SECY papers are conceived by the staff and subsequently submitted for Commission consideration is subject to the Chairman's influence and allows him, in his role as principal executive officer, to influence information that staff develop for Commission review.

OIG learned that the general practice for developing a SECY paper is as follows:

- Staff develop an issue that is either identified as a potential policy matter or of significant interest to the Commission for their consideration.

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- The Division Director may have periodic meetings with individual Commission members with regard to this information and may present the issue as an informal informational matter.
- Senior staff coordinate the matters identified by the staff with their designated DEDO who holds "alignment meetings" to determine whether this information is to be conveyed to the Commission and in what form.
- If the alignment meeting consensus is to develop a paper, the paper is generated by staff and submitted to the EDO who provides a paper to SECY for tracking, and simultaneously tracks the paper in the EDO's system.
- The paper topic is provided to the Commission for consideration at the Chairman's agenda planning session at which time the Commissioners vote to determine when they will address the paper.

OIG learned that the Chairman, unlike the other Commission members, can direct the staff not to develop a paper for the Commission's review. Based on information learned during the periodic meetings or any other meetings, the Chairman sometimes directs the EDO not to develop a paper for Commission review. If other Commissioners disagree, they must prepare a COM and gain majority support to direct the staff to prepare a paper for Commission review.

The EDO told OIG that the Chairman's staff track staff-generated papers and the Chairman decides what is considered a policy matter and whether he will inform the Commission of the matter. The EDO said the only way a Commissioner can influence when a staff paper is submitted or the timing of presentation to the Commission would be to prepare a COM and gain a majority on the matter to direct the staff. The EDO said the Chairman told him that he wanted to control the flow of policy issues to the Commission to enable them to be more efficient and effective by not overloading them so they could focus on certain issues.

Several OEDO managers and managers of offices that report to the EDO told OIG of problems with information flow, while others said they were unaware of any incidents where information was not provided to the Commission. For example, one manager told OIG that the current approach to information flow to the Commission was not the best way, and the Chairman regulates the information to the extent he believes the Commission needs the information to make a decision. He said the Commission is "not working well at all today, unfortunately" and attributed this to the Chairman's interpretation of his role and responsibilities and the other Commissioners disagreeing with his interpretation. In addition, he said, there is so much distrust at the chief of staff level that the Commissioners often jump to conclusions about the Chairman's directions. In contrast, another manager believed the current Chairman has taken the initiative to better integrate the Commission's agenda through agenda planning. He said the Chairman has the view that there are policy matters and there are administrative matters and he believes the administrative matters should not go to the rest of the Commission. However, he

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acknowledged that the Chairman could incorrectly label something as administrative and not inform the Commission. He said the staff was sensitive to this and noted that with the CR budget guidance memorandum, a known controversial matter, the staff asked the Chairman if he was coordinating the matter with the other Commissioners.

The majority of Commissioner chiefs of staff and legal advisors told OIG that the Chairman withholds information to the Commission by either suppressing papers or manipulating the agenda planning process because he controls the sequencing of papers to be presented to the Commission for vote. They said that this, in turn, causes papers to sit for weeks or months as the Chairman decides when information meetings are to be scheduled. Commissioner staff perceived this as an effort to control information available to the Commission as the Chairman's priorities often did not align with those of individual Commissioners.

Commissioners Svinicki, Ostendorff, and Magwood told OIG that they sometimes learn of potential papers the staff intend to submit to the Commission during their periodic meetings with agency managers, but then the papers do not materialize. This makes them question whether they are sufficiently informed and aware of policy issues affecting the agency. In particular, the three Commissioners mentioned a paper on the National Fire Protection Association (NFPA) 805 rule,¹⁵ where there were indications the staff wanted to raise policy matters to the Commission, but were unable to do so as the Chairman had determined the matter was not a policy issue. One DEDO told OIG that the Chairman stated he did not want a paper on NFPA 805 and as a result staff stopped working on the paper.

Another example provided by two Commissioner staff members was a paper on the International Regulatory Review Service (IRRS),¹⁶ which the Chairman allegedly directed staff to stop preparing.¹⁷ Commissioners told OIG that the distinction between policy issues and administrative actions was a subject of contention within the Commission. One Commissioner said that where disputes exist, the matters should be decided by the Commission; however, the Chairman has established a practice of categorizing a matter as "administrative" when it may have policy implications. The Commissioner noted that the CR budget guidance memorandum was a good example of this behavior.

¹⁵ NRC regulation 10 CFR 50.48(c), otherwise known as NFPA 805, is a risk-informed, performance-based fire protection regulation adopted by the agency in 2004. Lessons learned by the NRC staff from their review of the two NFPA 805 pilot plant license amendment requests revealed that the NRC staff had underestimated the resources necessary to review NFPA 805 license amendment requests. The NRC staff anticipated receiving 25 license amendment requests by the end of June 2011 as a result of the current Commission enforcement policy related to NFPA 805. Completing the reviews of such a large number of submittals would be a significant challenge to the agency. The NRC staff desired to propose an approach to the Commission to address the expected large number of submittals.

¹⁶ The IRRS is an International Atomic Energy Agency peer review and appraisal service. At the Government's request, during October 2010, an international team of safety experts reviewed NRC's regulatory framework for safety regarding operating U.S. nuclear power plants and the effectiveness of regulatory functions implemented by the NRC. The IRRS team identified a number of good practices, and made suggestions and recommendations where improvements are desirable or necessary.

¹⁷ Since OIG's interviews with the Commissioners, the staff submitted a paper on NFPA 805 to the Commission for review, and the Commissioners received a copy of the IRRS assessment.

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The Chairman's Policy Director told OIG that she meets with the EDO and the Secretary of the Commission at least twice monthly to coordinate upcoming policy matters and open items before the Commission, the EDO, and SECY. The EDO maintains a tracking system for all open and upcoming policy items from staff, and that SECY maintains a separate tracking system for all matters before the Commission. She uses these coordination sessions to ensure that all matters are addressed and to ensure the Commission has been notified on all matters. She said that Chairman Jaczko is very transparent in keeping the other Commissioners informed on matters, including when he makes decisions from a non-policy, resources perspective. She cited the CR budget guidance memorandum as an example where the Chairman held back issuing the memorandum until he had coordinated the guidance with the other Commissioners.

Chairman Jaczko told OIG he decides what is and is not a policy matter by consulting with the General Counsel, his interpretations of his statutory authority, and consultations with the EDO. He said the statute notes that the Commissioners always have the option to raise a matter as policy, which is why he consulted as he did with the other Commissioners on the CR budget guidance memorandum. He said he knew the Commission did not support the budget guidance for the High-Level Waste Program and that he wanted to be prepared for battle. He said he proceeded to line up the votes on the matter to ensure if it was addressed as a policy matter, his position would be supported. Chairman Jaczko said the agenda planning process allows the Commission to decide by majority which direction to proceed. He said it is a tool for him to keep the agency's business moving and gives the Commission a more predictable and efficient way to manage its business.

Chairman Jaczko told OIG that it was within his authority to tell the staff to prepare or not prepare papers. With regard to NFPA 805, he said he never directed staff not to prepare a paper on the topic. He recalled the staff came to him and said they would not be able to complete the required number of license amendments applications for NFPA 805. Chairman Jaczko told the staff they had been budgeted to complete the license amendments and they needed to figure out how to accomplish the task. As Chairman, it was within his authority to execute the budget and manage the policy and workload of the agency. Consequently, he decided the issue would not be on the Commission's agenda. The staff later informed him that they were unable to conduct the application reviews, and that this would have enforcement discretion implications. As a result, he directed them to prepare a paper for the Commission because now this was a policy issue the Commission needed to work out.

Foreign Travel

NRC Management Directive (MD) 14.1, *Official Temporary Duty Travel*, assigns the Chairman responsibility for approving official foreign travel for himself and the Commissioners. The handbook associated with MD 14.1 assigns approving officials responsibility to ensure that the travel is necessary to carry out NRC's mission and directs officials reviewing requests for official foreign travel at NRC's expense to "scrutinize the official purpose of the trip and the value of collateral purposes to ensure validity."

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OIG learned the Chairman required different levels of justification from each Commissioner concerning their requests for foreign travel. For example, one Commissioner was required to provide written justification to the Chairman for international trips, while other Commissioners were granted approval by the Chairman based simply on verbal notification of the planned trip. Additionally, the Chairman used foreign travel as an incentive for supporting him on issues.

Commissioner Svinicki said the Chairman has ambiguous approval criteria for foreign travel, which has made her reluctant to pursue trips. She said it is not worth her time and effort to develop a justification for a trip that she may be denied and because the Chairman does not provide an answer in a timely manner. For example, when requested by a host country to speak at conferences, she is unable to provide a timely response. She is now reluctant to pursue foreign travel because she is concerned about having to cancel depending on the Chairman's decision and the impact this has on her reputation.

Commissioner Magwood relayed one example where Chairman Jaczko wanted Commissioner Magwood to withdraw his request for an additional staff member to support the Commission offices. He said the Chairman told him that if he pursued the request, he would withhold authorizations on Commissioner Magwood's foreign travel.

Chairman Jaczko told OIG that as the Chairman of the agency he is responsible for managing the agency's workload and workflow, and in that respect he has overall management authority of the staff. He related that it was within his discretion to approve or not approve his colleague's foreign travel requests. As Chairman, he has tools that he uses to manage the agency, including the Commission, and to negotiate and get leverage. One such tool is his discretion to approve foreign travel. It was his responsibility to decide who best represented the agency and if he had colleagues who did not support him on votes, he was not likely to send them to represent him and the agency on international travel. Chairman Jaczko commented that there is nothing unethical or inappropriate about that and, in fact, it was his job, to make those difficult decisions. Further, he has never taken away anybody's international travel, or not signed a request for international travel.

Interpersonal Interactions with Commissioners and Staff

Commissioner staff members told OIG of incidents they perceived as unprofessional behavior by Chairman Jaczko toward their Commissioners or members of the staff. For example, staff mentioned the Chairman's behavior toward the OCAA Director when she circulated the draft order for SECY-10-0102 shortly after the Chairman submitted his vote. Several Commissioner staff members relayed incidents where the Chairman angrily confronted their Commissioner on issues; however, the Commissioners themselves did not relay such examples. Several current and former Commission staff members said the Chairman's behavior caused an intimidating work environment. A former Chairman told OIG that the Chairman often yelled at people and his tactics had a negative effect on people. He described the behavior as ruling by intimidation. The former Chairman said he verbally counseled Chairman Jaczko on his behavior on two occasions before leaving the agency.

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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. Some characterized these incidents as disagreements on matters where the Chairman held a strong view and they were reluctant to characterize the Chairman's behavior as unprofessional; however, they said that if they had subordinates who displayed the same behaviors, they would not tolerate it. Conversely, other senior managers interviewed said they never witnessed any unprofessional behavior on the Chairman's part.

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, and he regretted that.

III. FINDINGS

1. OIG determined that Chairman Jaczko used a FY 2011 CR budget guidance memorandum to initiate NRC's FY 2011 plans to close out its Yucca Mountain license application review even though the FY 2011 budget had not yet been passed. The Chairman's decision to direct the staff to follow the FY 2011 budget guidance was supported by the NRC General Counsel and consistent with (1) the discretion within his budget execution authority under the Reorganization Plan, (2) OMB Circular A-11 guidance to spend prudently during a CR period, (3) the Administration's decision to terminate the Yucca Mountain repository project, and (4) the Chairman's interpretation of the Commission's FY 2011 budget policy decisions, which articulated close-out activities.

OIG determined that although the Chairman had the authority to direct staff to follow the FY 2011 budget guidance, he was not forthcoming with the other Commissioners about his intent to stop work on the SER as part of implementing close-out activities. This included stopping work on SER Volume 3 (Review of Repository Safety After Permanent Closure), which NRC staff believed to be near completion by the end of FY 2010. The Chairman anticipated that proceeding to close-out in this manner could be controversial and viewed as a policy decision for full Commission consideration. Therefore, prior to directing issuance of the CR budget guidance memorandum, he strategically provided three of the four other Commissioners with varying amounts of information about his intention to proceed to closure and not complete SER Volume 3. He did not provide Commissioner Svinicki with any information about his intentions. Although two of the three Commissioners he spoke with did not fully understand the implications of the CR

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budget guidance memorandum, the Chairman told the EDO and the Chairman's Chief of Staff told the CFO, prior to their signing the memorandum, that all the Commissioners were informed and supported issuance of the CR budget guidance memorandum. In fact, subsequent to the issuance of the CR budget guidance memorandum, a majority of Commissioners disagreed with the outcome of the memorandum, which was the Chairman's direction to stop work on SER Volume 3. Additionally, a majority of the Commissioners did not think the conditions to proceed to closure (i.e., withdrawal or suspension) had been met.

OIG also determined that after Commissioner Ostendorff issued a COM to the Commission asking to direct the staff to continue its work on the SER, the Chairman communicated to Commissioners Magwood and Apostolakis that he expected their continued support. He told them that he would not have directed issuance of the CR budget guidance memorandum had they not committed to support him. Despite their view that they had not been fully informed about the Chairman's intent behind the CR budget guidance memorandum, Commissioners Apostolakis and Magwood elected not to participate in voting on the COM. Therefore, without a majority, the Commission was unable to move the matter from budget space, within the Chairman's purview, to policy space, within the Commission's purview.

2. OIG determined that although the NWPAs requires NRC to consider DOE's Yucca Mountain repository license application and issue a final decision approving or disapproving issuance of a construction authorization, there are various factors preventing the agency from meeting its statutory obligation. These factors include the Administration's decision to terminate the Yucca Mountain repository project, decreasing appropriations to NRC for the High-Level Waste Program, and the Chairman's direction to stop working on the SER.
3. OIG determined that although the Commission has internal procedures intended to facilitate collegial Commission decisionmaking based on majority rule, adjudicatory voting procedures are not consistently enforced. Furthermore, these written procedures do not provide details on the process that occurs between the completion of an adjudicatory SECY paper vote and the conduct of an affirmation vote on the matter. The lack of enforcement of and specificity in the Commission's written procedures, coupled with the Commission's practice not to move to affirmation until all Commissioners agree to the affirmation notice and order, allows matters to sit in abeyance without final Commission action.
4. OIG determined that the Chairman controls information provided to the other Commissioners based on his interpretation of his statutory authority as Chairman versus the authority given to the Commission. Because he acts as the gatekeeper to determine what is a policy matter versus an administrative matter, and manages and controls

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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. Ultimately, however, all Commissioners have the ability to bring what they perceive as policy matters before the Commission by writing a COM and gaining majority Commission support.

Please respond to this office on what, if any, action you intend to take in response to this report.

cc: Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

Senator BOXER. Senator, do you want to put something into the record?

Senator SESSIONS. I would like to offer the letter of December 15th from the Chairman.

Senator BOXER. Of course. We will put that in the record right next to the IG report and the General Counsel.

[The referenced information follows:]

December 15, 2011

The Honorable Jeff Sessions
326 Russell Senate Office Building
Washington DC 20510

Dear Senator Sessions;

I am pleased to respond to your question on the need to invoke Emergency Powers at the Nuclear Regulatory Commission under the Reorganization Plan of 1980. I served as Chairman from July 2006 until May 2009, during which time I never invoked Emergency Powers, even though the NRC Operations Center was activated into "monitoring" mode on several occasions. It was not unusual for the NRC Ops Center to be in monitoring mode during adverse weather conditions, particularly during hurricane season in the Gulf area, something I am sure you can appreciate. The Ops Center would remain in monitoring mode for the duration of the hurricane or weather event.

Weather was not the only trigger. I recall one time when the Ops Center was activated when a wayward airplane was unresponsive to radio instruction, and whose flight path approached some of our power plants. While this particular incident was resolved, at no time would I have felt it necessary to suspend Commission procedures and invoke Emergency Powers. I would also point out that during every "monitoring mode" incident, one of my senior staff, as well as a senior staff member from each of the Commission offices, were expected to participate in all briefings and conference calls for the duration of the emergency. In this manner, I fulfilled my statutory obligation to keep the Commission fully informed on all current matters.

Given a situation similar to the incident at Fukushima, I can see no reason to invoke Emergency Powers because nothing in the incident would have required a suspension to the normal Commission procedures. Moreover, I do not believe that suspending the law, which is what Emergency Powers allows, is something taken casually or in response to an incident in a foreign country that has little or no threat to the U.S. It is my understanding that former Chairman Richard Meserve declared Emergency Powers during 9/11 (a real crisis on American soil), but did so in consultation with his fellow Commissioners. Moreover, he understood the strength of providing five voices instead of one, and he assigned his fellow Commissioners duties to help coordinate the NRC response. Chairman Meserve exercised both leadership and a collegial approach.

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As stated in the beginning, I never declared Emergency Powers and had I done so, I would have so stated in writing, would have called my fellow Commissioners, and most importantly, solicited their support for my actions. Furthermore, I would have indicated when that authority was expected to end, and would never have excluded my fellow Commissioners from the Ops Center, as has been reported during the Fukushima event.

Please let me know if you need any additional information.

A handwritten signature in black ink, appearing to read "Dale Klein". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dale Klein, Ph.D., P.E.
Associate Vice Chancellor for Research
The University of Texas System
601 Colorado Street, Room 302
Austin, Texas 78701

Senator SESSIONS. I think, Chairman, I don't necessarily agree with the summary analysis of that report as the Chairman expressed it. But I certainly don't object to it being part of the record.

Senator BOXER. Thank you. Thank you very much. And people can read both and make their decision.

Senator, do you wish to go yet? No.

We are going to go on with Senator Crapo.

**OPENING STATEMENT OF HON. MIKE CRAPO,
U.S. SENATOR FROM THE STATE OF IDAHO**

Senator CRAPO. Thank you very much, Madam Chairman.

I believe it goes without saying that all of us very disturbed by what is happening here. It seems to me that it is truly a remarkable circumstance when four members of a five-member Commission from both parties come forward with a letter to the President to state that they feel that the operation of the Commission on which they are serving is jeopardized. And then to see those four members vilified in what appears to be a retaliatory response, it just raises tremendous concern on my part about what is happening here.

After these members of the Commission have raised their concerns, they have been accused of being controlled by others in their actions, they have been accused of trying to undermine the security and the safety of our nuclear operations in the United States. And they have been accused of trying to block transparency in the agency.

These accusations are not minor. And it appears to me that it is something that we ought to look into in this Committee, because it is very disturbing.

If you read the letter that was sent, these Commissioners said just the opposite, they expressed the concern that the NRC's essential mission to protect the health, safety, and security of the American people are being adversely affected. It has been said that they have been trying to undermine a proper response to the Fukushima accident. They have made the point that they feel that the Chairman has attempted to intimidate the Advisory Committee on reactor safeguards, a legislatively chartered independent group of technical advisors, to prevent it from reviewing certain aspects of the NRC's analysis of the Fukushima incident. We have very different versions of what is going on here.

But the bottom line to me is that we have four members of a five-member Commission, and again, clearly from both parties, folks who have been appointed by the current President, President Obama, three of the four, I believe. And the accusations, in addition to those that I have mentioned, also are that apparently they don't understand the law, and they don't really have the authority to be concerned about the issues that they are raising, which I also find to be a remarkable response to the questions.

As I understand it, the law says each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his or her duties and responsibilities and shall have one vote. And in a 1980 review of the operation of the Commission, it was concluded

that the Chairman may not withhold or delay providing information requested by the Commission, individual members shall also have full access to all information in order to assure diverse views are properly informed.

And this report goes on to say that the Commission's functions, information relating to the Commission's functions will be given to the Commissioners immediately and without any alteration.

Now, I understand that there is an authority of the Chairman of the Commission to declare an emergency. And maybe we are going to get into battles over whether the Chairman of the Commission can simply eliminate the relevance of the other four members of the Commission by declaring an emergency. But it seems to me that we are getting into some pretty dangerous territory here, if we start, as a Committee, involving ourselves in an effort to personally attack and undermine the character of any of the members of this Commission. I think we ought to look into these facts and find out what has been happening and see whether we need to take any action in that regard.

I am very disturbed by not only the dynamics of the fact that four members of the Commission have had to come forward with a letter to the President, and I think that everybody in America can see how remarkable it is that four people, four of the members of the Commission would deem it necessary to do that. I don't think anyone would believe that they did this lightly. And then to see the retaliation that has occurred in response to it. It is truly disheartening.

Thank you, Madam Chairman.

Senator BOXER. Thank you very much.

Senator Carper is going to withhold, and we will turn to Senator Barrasso.

**OPENING STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM THE STATE OF WYOMING**

Senator BARRASSO. Thank you, Madam Chairman. And I appreciate the opportunity to talk.

I have great concerns. Ever since the nuclear disaster at Fukushima, the American people and the world at large have been discussing the need for improving nuclear safety. The American people want us to ensure that there will not be a repeat of the nuclear disaster we saw in Japan, not have a repeat here in the United States, that communities across America are safe from harm, and that the people around the country understand that the Nuclear Regulatory Commission is tasked with protecting us. It is not a responsibility that should be taken lightly.

The October 13th letter to the White House Chief of Staff William Daley from two Republican and two Democrat NRC Commissioners raises serious in my view about public safety. As noted in the press and the House Oversight hearing yesterday, the letters describe the Chairman's actions and his behavior as "causing serious damage" to the NRC and are "creating a chilled work environment" at the agency. The letter states that the Chairman "intimidated and bullied senior staff to the degree that he has created," he, he has created, "a high level of fear and anxiety resulting in a chilled work environment." Most importantly, the letter states

that the "Commission no longer functions as effectively as it should."

Now, this is not the first time that this Committee has heard such charges. Before this Committee, earlier this year, I raised the issue of the June NRC Inspector General report. That report stated, "Several current and former Commission staff members said the Chairman's behavior caused an intimidating work environment." A former Chairman told the Office of Inspector General that the Chairman often yelled at people, and his tactics had a negative effect on people. He described the behavior as ruling by intimidation. That is on page 43 of the report.

Are we to dismiss the Inspector General's report where he states that there are a number of interviewees and several current and former NRC staff who echo what the four Commissioners who are here today with us have told the White House? Is nearly the entire NRC out to just get the Chairman? Or is there some truth to the concerns being raised by the many individuals who are trying to get this agency back on track?

We must get back to the mission at hand and do the proper oversight to see that this agency gets back on track. We have four Commissioners here who say that the agency isn't working as effectively as it should. That means this agency, tasked with protecting the American people, is not fulfilling its mission under this Chairman's leadership.

White House Chief of Staff Bill Daley said of the Chairman, "The Chairman apologized for the distraction caused by the present tensions and has taken responsibility for improving communication among the Commissioners." Well, apologizing for causing a distraction for the Obama administration to me is not an apology. This is about public safety, and the Commissioner needs to apologize to the public for letting things get to this point.

Bill Daley's call to have all the Commissioners meet with a "trusted third party to work everything out with the Chairman," well, it ignores the claims made about verbal harassment to women and by others and the hostile work environment that the Commissioners and the staff have alleged. In no other workplace in this country would such charges be simply ignored, or would the accuser be told to work everything out with those who were making the accusations. The White House needs to do much more.

So as Ranking Member of the Subcommittee on Clean Air and Nuclear Safety, I ask the Chairman of the Subcommittee and the full Committee to hold additional hearings to investigate these claims and to find out how this agency has gotten off track and how we can get it back on the right track on behalf of the safety of the American people.

Thank you, Madam Chairman.

Senator BOXER. Thank you very much.

We will next hear from Senator Vitter, followed by Senator Boozman.

**OPENING STATEMENT OF HON. DAVID VITTER,
U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator VITTER. Thank you, Madam Chair, and thanks to all of our witnesses.

I want to underscore in the strongest possible terms all of these concerns that have been voiced by my colleagues. We are in a time following the Japanese disaster, we are in one of the two most sensitive and important times regarding civilian nuclear safety in our lifetime. And the good news is, we don't have a crisis situation in terms of our reactors, in terms of immediate safety concerns, in terms of the industry and the state of the industry and the state of our technology.

But the bad news is, we do have a crisis of government and a crisis of leadership, as evidenced by this discussion and the leadership style of the Chairman. Again, I want to repeat because it is so important, that these concerns are coming from four other Commissioners, two Democrats, two Republicans, three appointed under President Obama. By definition, this is obviously not some purely partisan disagreement. And I think we need to take it extremely seriously, because nuclear safety is involved. And it has reached, unfortunately, I believe, a crisis of government and leadership in the person of the Chairman.

I also strongly agree with my colleagues that first, this Committee should take a strong, active, aggressive role in fixing the problem. Because we owe it to our constituents. And second, we need to urge the President to get actively involved because in some sense only he and the White House can really truly fix this. I certainly agree with previous comments that the suggestion of bringing in some third party mediator type to deal with everyone is not getting truly and seriously involved. We need leadership here from the President and the White House to fix this really quickly. And I urge that as well.

Thank you, Madam Chair.

Senator BOXER. Thank you, Senator Vitter.

Senator Boozman.

**OPENING STATEMENT OF HON. JOHN BOOZMAN,
U.S. SENATOR FROM THE STATE OF ARKANSAS**

Senator BOOZMAN. Thank you, Madam Chair, and really quickly, in the interest of time, because I know we need to get to the panel.

The purpose of the hearing today to discuss Fukushima and the aftermath, how we can prevent that from happening here, all of that is so important. But I think the real problem is, and I think that we would all agree that for whatever reason, the Commission is pretty dysfunctional. I haven't been around here as long as some, but for me, in the past 10 years, this is probably kind of a unique thing. It shouldn't be a partisan issue, and I don't think it is a partisan issue in the sense that we have Democrats and Republicans serving on the Commission. The career staffers are having problems, I am sure there are Democrats and Republicans. But we really do have real problem.

So I would very much like, we are charged with oversight, I would very much like for us to figure out whatever steps we need to do to help solve the problem. And like I say, I think that that really is very, very important. So for whatever reason we have a major problem here, at a time when this is one of the Commissions that is so important. After the aftermath, we have seen what happens with lax supervision.

And again, right now, we have a significant problem. I would hope that the Committee does its job in doing the oversight to get this figured out and to solve the problem.

With that, I look forward to the testimony. Thank you.

Senator BOXER. Thank you.

Now, Senator Carper.

**OPENING STATEMENT OF HON. THOMAS R. CARPER,
U.S. SENATOR FROM THE STATE OF DELAWARE**

Senator CARPER. Well, to our Commissioners, thank you all for joining us here today. I remember in listening to Senator Alexander's comments, remember the first—I remember the day we had the hearing for the three nominees of President Obama, and just really being proud of the Administration, proud of the President for the selections that he had made and the nominees that he had sent to us that day.

I remember the first time the five of you came before this Committee to testify and feeling proud to chair the Subcommittee that has jurisdiction over clean air and nuclear safety, and knowing that it is in your hands, the leadership of the Nuclear Regulatory Commission. And a year or 2 later, to be here today, to have, on the heels of the hearing in the House of Representatives yesterday and the assertions, the letters to the White House and my conversations with each and every one of you, I share in the dismay of my colleagues.

As was said, and I will say it again, 20 percent of the electricity in this country comes from nuclear power. Because of the 104 nuclear power plants we have, we have less air pollution, we have less reliance on fossil fuels, we have greater energy independence, and frankly, a lot of jobs, good jobs, good paying jobs that help provide us the electricity we need to run this country and our economy. We need for this Commission to bring its A game to work every day, not just some of the time, all of the time.

This Commission, you have heard me say more times than you probably want to remember, if it isn't perfect, make it better. And there is a lot that you all do well. I don't think the NRC is dysfunctional. But you are not bringing your A game.

Frankly, where we serve on this side of the dais, the last several years, we have not brought our A game either. Sometimes I look at the U.S. Senate and I see wonderful people, smart people, bright people, good hearted people, dedicated people. And instead of getting a synergy out of this group in the Senate, sometimes we get just the opposite. To have a group of five people as talented and as dedicated and capable as you are and to not be able to work together any better than you are is just dismaying.

I had the opportunity to chair the same Subcommittee that Jim Inhofe used to and George Voinovich used to chair. And Madam Chair, with your blessing and that of Senator Inhofe, I would hope that our Subcommittee could take a more active role in helping to get to the bottom of why this leadership of the NRC is unable to function better, to function more effectively and to be more collegial.

In my own experience, I find that leadership is the key to everything I have ever been a part of. Senator Inhofe and I spent a lot

of years in the Navy, he in the submarine, me in an airplane looking for submarines. I know he knows a little bit about leadership, and I think I do, too.

I know as a leader around here, when people are unhappy with me here, I literally go to their offices. I go to their offices. And if there is some way I have offended somebody and hurt somebody, I apologize. I don't ask them to come to me, I don't ignore them, I go to see them. There are things that leaders sometimes have to do in order to create that environment of cooperation. Then there are the skills that we learn in other ways in other times of our lives. I think our leader, our Commissioner, our Chair here, may need to learn some of those lessons.

But this is a guy who has the potential for being a very fine, a very fine Chairman. And I want to make sure, as long as you are the Chairman, that that is the kind of Chairman you are going to be. We all want to do that.

And let me just say, we have gone through an experience at Dover Air Force Base which in the last 4 years has been nominated to be the best Air Force Base in the world, throughout the last 4 years, we have gone through an experience with the mortuary there where people weren't doing their best job every day. Three people blew the whistle. Three people blew the whistle on what they thought was inappropriate behavior involving the remains and fragments of remains of our fallen heroes.

What happened to them? They became demonized. They were, in one instance, two people were fired, and one person was put on administrative leave for months, because they told the truth. But we are not interested in—if these other four Commissioners are whistleblowers, I don't want to be part of demonizing them. But I want to find out, I hope that in the context of this conversation today and the hearings and discussions, maybe a roundtable that follows, we can end up not with recrimination, not with finger pointing, not with political gamesmanship, but we could end up with a Nuclear Regulatory Commission that actually will do the three things that they are supposed to do every day, to protect the health of the American people, to protect their safety, to protect our security and make sure that there are 104 nuclear power plants and the ones that follow that operate as close to perfect as they possibly can.

Thank you.

[The prepared statement of Senator Carper follows:]

STATEMENT OF HON. THOMAS R. CARPER,
U.S. SENATOR FROM THE STATE OF DELAWARE

Let me begin by welcoming back the Nuclear Regulatory Commission's (NRC's) Commissioners to our Committee. I appreciate you taking the time to be before us today.

Currently, this country has 104 nuclear power reactors operating in 31 States. Collectively, these nuclear power plants generate approximately 20 percent of our nation's total electric consumption.

The energy from these nuclear power plants has helped curb our reliance on dirty fossil fuels and has helped reduce our air pollution that damages health and causes global warming.

Despite the benefits of nuclear power, we have also seen the damages nuclear power can cause if not properly regulated.

The crisis at the Japanese Fukushima Daiichi facility is a strong reminder that with nuclear energy, we can never be complacent when it comes to safety. Safety must always be our top priority.

As I often say, if it is not perfect, make it better.

That is why I was pleased to see that quickly after the Fukushima crisis, the NRC decided to put together a task force to review its own practices to see if we could do better in the United States to protect safety.

Today I look forward to hearing an update on the NRC Task Force recommendation, hearing what the Commissioners view as their top concerns, and hearing when we might see actions.

I believe we all need to work together to make sure we incorporate the right lessons learned to keep our nuclear fleet safe into the future. I look forward to working with the NRC to ensure that happens.

Speaking of working together, I would like to take a moment to talk about the interactions of the Commissioners.

For over a decade, as a member of the Senate EPW Committee, I have worked closely with the men and women who have served on the NRC.

As Chairman of the Subcommittee responsible for nuclear safety, I have been particularly interested in the effective operation of the NRC.

I said many times that there have never been five better qualified people to serve as Commissioners than those who serve today.

That is why I am so disappointed that the five Commissioners, each talented and capable in their own right, have been unable to work together as a cohesive body.

During the past year I have sought to improve the tenor of relationships among the five current Commissioners of the NRC.

While I am discouraged that those efforts have not been as successful as I would have hoped, I am confident that the NRC will continue its critical mission—ensuring the safety and reliability of our nation's nuclear reactors now and in the future.

Recent disagreements among Commissioners, while significant, have not impacted nuclear safety, nor should they.

Moving forward, I will continue to encourage cooperation and collegiality among the Commission members and most importantly, that Congress provides the tools and resources the Commission needs to carry out its mission of protecting public safety through responsible nuclear regulation.

Senator BOXER. Thank you very much, Senator.

Now we turn to the Commissioners. And the way we have it, we have 5 minutes by the Chairman and each of you, if you would like to, can have up to 3 minutes each.

So, Chairman, welcome.

**STATEMENT OF HON. GREGORY B. JACZKO, CHAIRMAN,
U.S. NUCLEAR REGULATORY COMMISSION**

Mr. JACZKO. Well, thank you, Chairman Boxer, Ranking Member Inhofe, Chairman Carper, and Ranking Member Barrasso of the Subcommittee, and members of the Committee.

We appreciate the opportunity to appear before you today to update you on the NRC's review of the Fukushima Daiichi nuclear accident and the 2011 accomplishments of the agency.

Before I do provide these specific updates, I would like to take a moment to just make a few brief comments. As many of you have indicated, over the past several days, there has been a flurry of attention paid to the management of the NRC and the dynamics of the Commission. I regret that these internal matters have been elevated to a public forum, and I accept my share of responsibility for the situation. As I have indicated, I am committed to working with my colleagues to address these issues and better understand their concerns.

I have great respect for the experience and expertise of my colleagues, and I am committed to moving forward and working effectively with them to ensure the safety and security of nuclear power plants and nuclear materials in the United States.

In the aftermath of the Fukushima accident, the Commission established the Near-Term Task Force to spearhead our systematic

and methodical review of the NRC's nuclear reactor safety program. Its members included some of the agency's most experienced and expert staff, collectively having more than 135 years of regulatory experience.

In conducting their review, the Task Force's efforts were independent, but they had full access to the entire NRC staff, with more than 100 hours of briefings. They also spent thousands of hours reviewing agency products and information and consulted closely with the NRC site team in Japan.

When we last appeared before you, the Task Force had submitted its report to the Commission for consideration. In its report, the Task Force outlined a comprehensive set of 12 recommendations that touch on a broad range of important issues, including the loss of electrical power, earthquakes, flooding, spent fuel pools, venting, and emergency preparedness. The Task Force's recommendations have now undergone two additional reviews, one by the NRC staff more broadly and another by the Advisory Committee on Reactor Safeguards. And we have benefited from the insights and perspectives of industry leaders, nuclear safety and environmental groups, and members of the public.

The staff review endorsed nearly all of the Task Force's recommendations and identified several additional issues for consideration. The Advisory Committee on Reactor Safeguards also endorsed all of the Task Force recommendations that it has had the chance to examine thus far, and also proposed some additional steps.

The Commission has now directed the staff to begin implementing immediately, partially or fully, five of the safety recommendations from the Task Force and set goals of completing station blackout rulemaking within 24 to 30 months, and completing all actions in response to the lessons learned from Fukushima Daiichi within 5 years. And in addition, just this morning, the Commission has finalized its recommendations or comments on an additional set of prioritization recommendations made by the staff of the agency in regard to the remaining recommendations.

In summary, with the benefit of our staff's expertise, the ARCS's advice and critical stakeholder input, the Commission is moving forward on these recommendations. I think we all agree that this past year has been an exceptionally challenging and productive year for the NRC. We are proud to have once again scored among the top tier of Federal agencies in the 2011 best places to work in the Federal Government rankings. And the agency scored No. 1 in all four major indices.

The staff and the Commission have done an outstanding job in the past year. We had anticipated that 2011 would be busy, but unexpected issues, most notably Fukushima Daiichi, raised substantial new challenges. In spite of these challenges, the staff remained focused on our critical safety mission and ultimately kept the public health and safety at the forefront of all of its actions.

With that, I will conclude my testimony and appreciate the opportunity to answer your questions. Thank you.

[The prepared statement of Mr. Jaczko follows:]

WRITTEN STATEMENT
BY GREGORY B. JACZKO, CHAIRMAN
UNITED STATES NUCLEAR REGULATORY COMMISSION
TO THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
AND THE
SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY
UNITED STATES SENATE
December 15, 2011

Introduction

Chairman Boxer, Ranking Member Inhofe, Chairman Carper, Ranking Member Barrasso, and Members of the Committee, we appreciate the opportunity to appear before you to update you on the NRC's review of the Fukushima Dai-ichi nuclear accident and implications for the domestic fleet of nuclear power reactors and the NRC's work as a regulator. When we last appeared before you, the agency's Near-Term Task Force ("Task Force") had submitted its report to the Commission for consideration. That report included a comprehensive set of 12 recommendations – many with both short- and long-term elements – to increase safety and redefine what level of protection of public health is regarded as adequate. It also recommended additional study of some issues. In my testimony today, I would like to update you on where the NRC staff and Commission efforts currently stand.

First, I would like to publicly thank the NRC staff for their excellent and tireless work. I especially want to applaud the Task Force and the NRC Senior Management Steering Committee that led the development of papers to supplement the Task Force's outstanding work. The Commission benefits every day from the NRC staff's efforts as we all seek the best path forward following the events in Japan.

Commission Direction to Staff Following Task Force Recommendations

On August 19th, the Commission directed the staff to provide us with a series of vote papers within 21 days, 45 days, and 18 months addressing different aspects of the Task Force recommendations. We have received the first two of these requested papers and held public Commission meetings with stakeholder and staff presentations to discuss them.

Finally, we directed the staff to carry out these activities with the prompt engagement of stakeholders to review and assess the recommendations of the Task Force in a comprehensive and holistic manner for the purpose of providing the Commission with fully informed options and recommendations. We believe that the Commission meetings mentioned above, and other up-front stakeholder involvement that I will mention later, have been time well spent, and should result in the best safety decisions.

NRC Staff Recommendations regarding Actions to be Taken without Delay

On September 9th, staff submitted the 21-day paper that identified those Task Force recommendations that could, and, in the staff's judgment, should be implemented in part or in whole, without delay. In its paper, the staff agreed with the Task Force that none of its 12 recommendations identified an imminent hazard to public health and safety, and also recognized that the agency does not have enough resources to initiate actions on all recommendations in the near term. In completing its work on the 21-day report, the staff conducted a public meeting on August 31 and also received written stakeholder comments. The industry, the Federal Emergency Management Agency, and nongovernmental participants agreed in concept with the recommendations discussed at the meeting, although various viewpoints emerged concerning the pace of implementation and associated regulatory vehicles.

The staff paper identified five of the 12 Task Force recommendations as those that it believes should be implemented immediately in whole or in part; however, in some cases, the staff paper proposed specific approaches and regulatory vehicles different from what the Near-Term Task Force recommended. In general, the staff's approach to each recommendation

involves stakeholder engagement and implementation of the recommendation through the appropriate regulatory vehicle or vehicles. The five Task Force recommendations, as revised and presented by the staff, address issues related to seismic and flooding hazards, station blackout, B.5.b or mitigating strategies equipment, hardened vents for boiling water reactor containments, emergency response capabilities, and response to multi-unit events. The specific recommendations in the 21-day paper are as follows:

- Recommendation 2.1: Continue stakeholder interactions to discuss the technical basis and acceptance criteria for conducting a reevaluation of site-specific seismic hazards, and initiate stakeholder interaction to discuss application of current regulatory guidance and methodologies being used for new reactors to the reevaluation of flooding hazards at operating reactors. Develop and issue a request for information to licensees to (1) reevaluate site-specific seismic and flooding hazards, and (2) identify actions that have been taken or are planned to address plant-specific vulnerabilities associated with the updated seismic and flooding hazards. Finally, evaluate licensee responses and take appropriate regulatory action to resolve those vulnerabilities.
- Recommendation 2.3: Develop and issue a request for information to licensees to (1) develop a methodology and acceptance criteria for seismic and flooding facility walk downs to be endorsed by the staff following interaction with external stakeholders, (2) perform seismic and flood protection walk downs to identify and address plant-specific vulnerabilities and verify the adequacy of monitoring and maintenance for protective features, and (3) inform the NRC of the results of the walk downs and corrective actions taken or planned.
- Recommendation 4.1: Engage stakeholders in support of rulemaking activities to enhance the capability to maintain safety through a prolonged station blackout.

These activities will include the development of the regulatory basis, a proposed rule, and implementing guidance.

- Recommendation 4.2: Develop and issue Orders to licensees to provide reasonable protection of the equipment used to satisfy the requirements of 10 CFR 50.54(hh)(2) from the effects of external events, and to establish and maintain sufficient capacity to mitigate multiunit events. This will include interaction with stakeholders to define acceptance criteria for reasonable protection of that equipment from design basis external hazards.
- Recommendation 5.1: Develop and issue Orders to licensees with Boiling Water Reactor (BWR) Mark I primary containment designs to take action to ensure reliable hardened wet well vents. This will include interactions with stakeholders to develop the technical bases and acceptance criteria for suitable design expectations for reliable hardened vents.
- Recommendation 8: Issue an advanced notice of proposed rulemaking to engage stakeholders in rulemaking activities associated with the methodology for integration of onsite emergency response processes, procedures, training, and exercises. Interact with stakeholders to modify the emergency operating procedures (EOPs) generic technical guidelines in order to include guidance for severe accident management guidelines (SAMGs) and extensive damage mitigation guidelines (EDMGs) in an integrated manner and to clarify command and control issues, as appropriate.
- Recommendations 9.3 and 9.4: Develop and issue a request for information to licensees, including a schedule for interactions with stakeholders, to (1) perform a staffing study to determine the required staff to fill all necessary positions to respond to a multi-unit event, (2) evaluate what enhancements would be needed

to power communication equipment necessary for licensee onsite and offsite communications during a prolonged station blackout event, and (3) inform the NRC of the results of the staffing study and any actions taken or planned in response to those results and to enhance communication equipment. In addition, the staff also recommends that the NRC more closely monitor the industry's completion of the Emergency Response Data System (ERDS) modernization initiative, schedule to be completed by June 2012, so that staff can use additional regulatory tools should licensees fail to meet their implementation schedules.

The staff has concluded that the implementation of each recommendation noted above would improve safety at U.S. nuclear facilities.

In addition to the review of the recommendations by the staff, the Advisory Committee for Reactor Safeguards (ACRS) also has reviewed the recommendations that should be implemented without delay. As part of its review, the ACRS concluded that none of the recommendations will be negated, or rendered inappropriate, by the acquisition of new information.

On Thursday, October 20, in response to the 21-day report, the Commission directed the agency's staff to begin immediately implementing these seven 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 staff was directed to utilize performance-based standards in any new or revised regulations, wherever possible. The Commission also set a goal of completing station blackout rulemaking by 2014, and to strive for completion of all actions in response to the lessons learned from Fukushima within five years – by 2016.

Prioritization of Recommended Actions to be taken in Response to Fukushima Lessons Learned

On October 3, 2011, the NRC staff submitted to the Commission the requested 45-day report recommending a prioritization of the 12 Task Force recommendations. This paper reflects both the results of a September 21st public meeting with representatives of the nuclear industry to better understand their current plans and actions to address the lessons learned from the Fukushima Dai-ichi event, and the continued review of the Task Force recommendations by the staff following submission of the 21-day paper.

As a result of the staff's prioritization and assessment process, the Task Force recommendations were prioritized into three tiers. Tier 1 consists of those Task Force recommendations that the staff determined should be started without unnecessary delay and for which sufficient resource flexibility, including availability of critical skill sets, exists. The staff recommended that this tier include all the actions identified in the 21-day paper, plus two additional items that were identified as part of the staff's continuing review of the Task Force recommendations. Those two additional recommendations are: (1) the inclusion of Mark II containments in the staff's recommendation for reliable hardened vents associated with Task Force recommendation 5.1, and (2) the implementation of spent fuel pool instrumentation proposed in recommendation 7.1.

Tier 2 comprises those recommendations that could not be initiated in the near term due to factors that include the need for further technical assessment and alignment, dependence on Tier 1 issues, or availability of critical skill sets. These include recommendations regarding spent fuel pool makeup capability, and most of the remaining portions of recommendation 9.3 regarding emergency preparedness regulatory actions.

Tier 3 includes those recommendations that require further staff study to support a regulatory action, have an associated shorter-term action that needs to be completed to inform the longer-term action, are dependent on the availability of critical skill sets, or are dependent on the resolution of Task Force Recommendation #1, which deals with clarification of the regulatory

framework and is to be the subject of the 18-month paper requested in the Staff Requirements Memorandum. Tier 3 includes all of the items identified for long-term evaluation in the Near-Term Task Force report. All or parts of three other task force recommendations are included in this tier because they depend on evaluation or completion of other recommendations or on the availability of critical skill sets.

The staff's 45-day paper also includes two other important components: schedules, milestones, and resources associated with Tier 1 and Tier 2 activities and the identification of a number of additional issues with a clear nexus to the Fukushima Dai-ichi event that may warrant regulatory action, but which were not included with the Near-Term Task Force recommendations. These new recommendations address potential safety issues such as spent fuel storage, instrumentation for seismic monitoring, and emergency planning.

The Commission is currently considering the staff's recommendations in the 45-day report. The NRC staff has provided the Commission with additional important information related to the recommendations that the Task Force initially identified. With the benefit of our staff's experience and thoughtful consideration, the ACRS' advice, as well as critical stakeholder input, the Commission is now actively moving forward. The Commission looks forward to reaching a final decision on each of the recommendations in the coming weeks and we agree that the NRC should strive to complete and implement the lessons learned from the Fukushima accident within five years. We continue to welcome and encourage additional safety suggestions from our broad range of stakeholders.

2011 Accomplishments

In addition, I would like to take this opportunity to update you on the many important accomplishments the NRC has made this year. 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 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.

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 financing 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 a well-functioning agency with a strong focus on our mission, and the staff's steadfast efforts, day-in and day-out, to strengthen 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 Boxer, Ranking Member Inhofe, Chairman Carper, Ranking Member Barrasso, and Members of the Committee, this concludes my formal testimony today. On behalf of the Commission, thank you for the opportunity to appear before you and your

continued interest in our work on these important issues. We look forward to continuing to work with you to advance the NRC's important safety mission. We would be pleased to respond to any questions you may have.

Questions from Senator Boxer

QUESTION 1. I share your strong commitment to ensuring safety at our nation's nuclear power facilities. Can you specifically elaborate on what progress has been made by the NRC to begin implementing the Task Force recommendations as outlined in the staff prioritization and proposed schedule of October 3, 2011?

ANSWER:

As a result of recent legislative expectations and input it received from stakeholders, the NRC staff has accelerated the schedule originally proposed in the October 3, 2011, paper to the Commission (SECY-11-0137). In accordance with the new accelerated schedule, on February 17, 2012, the staff provided a notation vote paper to the Commission, SECY-12-0025, proposing orders on Tier 1 issues and requests for information to be issued to licensees before the first anniversary of Japan's March 11, 2011, Great Tōhoku Earthquake and subsequent tsunami. SECY-12-0025 is publicly available and is currently under review by the Commission.

The three orders drafted by the staff are consistent with the recommendations and prioritization in the October 3, 2011, paper. Specifically, two of the orders are proposed to be issued to all reactor licensees, including holders of construction permits under 10 CFR Part 50, and a holder of a combined license (COL) under 10 CFR Part 52, regarding (1) development of strategies to mitigate beyond-design-basis natural phenomena that addresses both multi-unit events and reasonable protection of equipment identified under such strategies, and (2) installation of enhanced spent fuel pool instrumentation. The third order, pertaining to reliable containment vents, is proposed to be issued to licensees operating boiling water reactors (BWRs) with Mark I and Mark II containments.

The NRC staff is also planning to issue a request for information, as described in the October 3, 2011, paper. The request addresses seismic and flooding hazard reevaluations, seismic and flooding hazard walkdowns, and includes a request for licensees to assess their current communications system and equipment under conditions of onsite and offsite damage and prolonged station blackout (SBO) and to perform a staffing study to determine the number and qualifications of staff required to fill all necessary positions in response to a multi-unit event. Licensees are required to respond to the request for information as provided in 10 CFR 50.54(f) and Section 182 of the Atomic Energy Act of 1954, as amended.

The NRC staff's proposed implementation dates and projected actions for the proposed orders and requests for information are as follows:

Schedule Overview for Orders:

Milestone	Operating Reactors	Combined License Holders	Construction Permit Holders
Guidance Issued	August 31, 2012	August 31, 2012	August 31, 2012
1st Update	October 31, 2012	October 31, 2012	October 31, 2012
Plan Submitted	February 28, 2013	August 31, 2013	August 31, 2013
Periodic Updates	Every six months	Every six months	Every six months
Latest Completion	December 31, 2016	Prior to initial fuel load	Prior to receipt of operating license

Schedule Overview for 50.54(f) Letter on Seismic and Flooding Reevaluations:

Milestone	Operating Reactors and Construction Permit Holders
Guidance Issued	November 30, 2012
Initial Response	January 30, 2013
Licensee Seismic Hazard Evaluations Due	September 9, 2013 (CEUS) / March 9, 2015 (WUS)
Licensee Flooding Hazard Evaluations Due	March 9, 2013 – March 9, 2015 (based on prioritization)
Future Steps	Pending NRC evaluation and prioritization, with completion of evaluations for all facilities between October 2016 and April 2019

Schedule Overview for 50.54(f) Letter on Seismic and Flooding Walkdowns:

Milestone	Operating Reactors
Guidance Issued or Endorsed	~ May 2012
Licensees Identify Walkdown Procedures To Be Used	June 9, 2012 (flooding) / July 9, 2012 (seismic)
Licensees Provide Results of Walkdowns	180 days after NRC endorsement of the walkdown procedure (~November 2012)

Schedule Overview for 50.54(f) Letter on Enhanced EP Staffing and Communications:

Milestone	Operating Reactors, Combined License Holders, and Construction Permit Holders
4.2 Guidance Issued or Endorsed	August 31, 2012
Licensee Responses	June 9, 2012 (communications) June 9, 2012 (staffing items 3 through 6) October 31, 2012 (staffing items 1 and 2)*

* 60 days after issuance of guidance associated with Recommendation 4.2 order.

QUESTION 2. At the hearing, you mentioned that five of the Task Force recommendations have majority support by the commission for implementation. Going forward, which recommendations have majority support?

ANSWER:

In its Staff Requirements Memorandum (SRM) dated December 16, 2011, the Commission approved the NRC staff's implementation plan for the eight Tier 1 activities outlined in SECY-11-0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned," dated October 3, 2011. Some of these items will require further Commission review and approval before implementation. The eight Tier 1 items are:

(1) NTTF Recommendation 2.1 – This will be a request for information from NRC licensees in accordance with 10 CFR § 50.54(f). Licensees will be asked to perform, and provide the results of, a reevaluation of the seismic and flooding hazards at their sites using current NRC requirements and guidance.

(2) NTTF Recommendation 2.3 – This will be a request for information from NRC licensees in accordance with 10 CFR § 50.54(f). Licensees will be requested to develop a methodology and acceptance criteria for the performance of onsite seismic and flooding walkdowns, and complete the walkdowns within 180 days of the endorsement of the walkdown procedures.

(3) NTTF Recommendation 4.1 – This rulemaking that addresses station blackouts (SBOs) is expected to be completed within 24-30 months. An advance notice of proposed rulemaking (ANPR) has been drafted by the NRC staff and is expected to be issued in early spring.

(4) NTTF Recommendation 4.2 – This will be addressed in an Order issued to all reactor licensees, including holders of construction permits under 10 CFR Part 50, and a holder of a combined license (COL) under 10 CFR Part 52. These licensees will be required to develop strategies to mitigate beyond-design-basis natural phenomena that addresses both multi-unit events and reasonable protection of equipment identified under such strategies.

(5) NTTF Recommendation 5.1 – This will be addressed in an Order issued to all reactor licensees operating boiling water reactors (BWRs) with Mark I and Mark II containments. These licensees will be required to have a reliable hardened vent to remove decay heat and maintain control of containment pressure within acceptable limits following beyond-design-basis events that result in the loss of active containment heat removal capability or prolonged SBO.

(6) NTTF Recommendation 7.1 – This will be addressed in an Order issued to all reactor licensees, including holders of construction permits under 10 CFR Part 50, and holders of COLs under 10 CFR Part 52. These licensees will be required to have a reliable indication of the water level in associated spent fuel storage pools capable of supporting identification of pool water level conditions by trained personnel.

(7) NTTF Recommendation 8 – This will be addressed in a rulemaking that involves the integration of emergency procedures and is expected to be completed in 2016. The staff will publish an ANPR and seek stakeholder involvement during the rulemaking process.

(8) NTTF Recommendation 9.3 – This will be addressed in a request for information from NRC licensees in accordance with 10 CFR § 50.54(f). Licensees will be requested to assess their current communications system and equipment under conditions of onsite and offsite damage

and prolonged SBO, and perform a staffing study to determine the number and qualifications of staff required to fill all necessary positions in response to a multi-unit event.

QUESTION 3. The NRC Task Force recommended that every ten years, nuclear reactor safety standards should incorporate any new information on the strength of earthquakes, tsunamis, hurricanes, or other natural disasters. Do you support this recommendation and when can we expect to see it completed?

ANSWER:

On December 15, 2011, the Commission approved the NRC staff's proposed prioritization of this activity. The NRC staff is working to determine the required regulatory activities, estimated schedules, and associated resource impacts of this recommendation. In July 2012, the staff will provide the Commission with a proposed schedule for implementing this recommendation.

This proposal was prioritized as a longer-term action because there are shorter-term actions that have more immediate benefits to public health and safety, and which need to be completed first, in order to effectively inform the longer-term actions. However, the staff does see the potential for safety improvement in the near-term associated with licensee's performing a reevaluation of the hazards at their sites. Thus, the staff is developing an approach and schedule for completing this associated near-term action. NRC will request licensees to: (1) reevaluate site-specific seismic and flooding hazards, (2) perform seismic and flood protection plant walk-downs, and (3) identify actions that have been taken or planned to address plant-specific issues associated with the updated hazards or identified during the plant walk-downs. Information received from these near-term actions will be used to further inform the Commission's position regarding the periodic reevaluation of seismic and flooding hazards.

QUESTION 4. Similarly, the Task Force recommended that reactors have technologies that would prevent the sort of hydrogen explosions that we saw in Japan. Do you support this recommendation and when can we expect to see it completed?

ANSWER:

On December 15, 2011, the Commission approved the NRC staff's proposed prioritization of this activity. The NRC staff is working to determine the required regulatory activities, estimated schedules, and associated resource impacts for the control and mitigation of hydrogen. In July 2012, the staff will provide the Commission with a proposed schedule for implementing this recommendation.

This action to evaluate the control and mitigation of hydrogen has been prioritized as a longer-term action because it (1) requires further staff study to support needed regulatory actions, and (2) the critical staff skill sets needed for this study are otherwise focused on the shorter-term activities associated with work on reliable hardened vents for Mark I and Mark II containments.

QUESTION 5. Please cite and describe the legal authorities that relate to the responsibilities for scheduling Commission work, administering staff, and managing the day-to-day operations of the Commission.

ANSWER:

Title II of the Energy Reorganization Act of 1974, 42 USC 5841-5853, established the Nuclear Regulatory Commission and set forth basic requirements for Commission and staff operations. For example, the Act created the Office of the Executive Director for Operations and organized several other staff offices. Many of the Act's operational guidelines were then amended and explained in greater detail by the Reorganization Plan No. 1 of 1980, 5 USC App. 1.

In addition, the Commission issued rules at 10 CFR Part 1, which further outline the organization, authority, and duties of various agency offices. The agency has a set of publicly-available Management Directives (<http://www.nrc.gov/reading-rm/doc-collections/management-directives/>), that contain the agency's policies and procedures governing internal functions necessary for the agency to accomplish its regulatory mission. Finally, the Commission has adopted publicly-available Internal Commission Procedures (<http://www.nrc.gov/about-nrc/policy-making/internal.html>).

QUESTION 6. Please describe the impact of having the Task Force's safety recommendations designated as actions that are needed to ensure that nuclear power plants provide "adequate protection to the health and safety of the public..." under 10 C.F.R. § 50.109. Did the Task Force and the NRC staff who reviewed the Task Force recommendations determine that the recommendations are actions that are needed to ensure that nuclear power plants provide "adequate protection to the health and safety of the public..." as described in 10 C.F.R. § 50.109? Do you think that the recommendations should be designated as actions that are needed to ensure that nuclear power plants provide "adequate protection to the health and safety of the public..." as described in 10 C.F.R. § 50.109?

ANSWER:

Actions that are required based upon a finding of adequate protection need not be accompanied by a backfit analysis, which means the requirement does not have to be cost-justified.

The Near Term Task Force (NTTF) concluded that the Fukushima Dai-ichi accident provided new insights regarding low-likelihood, high-consequence events that warrant enhancements to defense-in-depth on the basis of redefining the level of protection that is regarded as adequate. Similarly, the NRC staff in a paper to the Commission proposing a prioritization of the NTTF recommendations proposed to initiate actions on the recommendations under the premise of assuring or redefining the level of protection of public health and safety that should be regarded as adequate in accordance with the backfit rule.

The three Orders drafted by the NRC staff and transmitted to the Commission for its consideration in SECY-12-0025 (February 12, 2012), stated that the actions required by each order would involve defining the level of adequate protection needed. The draft information request (under the authority of 10 CFR 50.54(f)) drafted by the staff and transmitted to the Commission in SECY-12-0025, stated that the requested information is needed to verify compliance with the facility's licensing basis and to determine if additional regulatory action is necessary. Such additional regulatory action, if any, may be justified as needed for adequate protection or may be cost-justified in accordance with the Backfit Rule.

The Commission is still considering the staff's recommendations in SECY-12-0025. The Commission's decision on SECY-12-0025 will indicate whether it will approve the staff's recommendations that the Commission find that the orders are a matter of adequate protection.

With respect to future actions, in votes on the prioritization paper where staff proposed to initiate actions on the recommendations under the premise of assuring or redefining the level of protection of public health and safety that should be regarded as adequate in accordance with the backfit rule, a majority of Commissioners indicated that they do not currently have sufficient information to make a determination whether any of the remaining NTTF recommendations should be determined to be a matter of adequate protection.

QUESTION 7. Please provide an update of the NRC's assessment of the "cold shutdown" status of the TEPCO reactors in Fukushima, Japan?

ANSWER:

On December 16, 2011, Japanese Prime Minister Yoshihiko Noda announced that the reactors at Fukushima Dai-ichi were in a stable, cold shut-down condition. This marked the end of Tokyo Power Electric Company's (TEPCO) Roadmap to Recovery of Fukushima Dai-ichi and started the Roadmap Towards Decommissioning. The NRC staff monitors the events at Fukushima Dai-ichi daily and agrees that the reactors are in a stable, cold shut-down condition, and that reliable and redundant means are available to maintain the reactors in their stable and cold condition.

The NRC staff has also recently conferred with TEPCO and Government of Japan nuclear regulatory officials concerning the recent temperature anomalies noted on the Fukushima Dai-ichi, Unit 2 lower head. The NRC staff concurs with TEPCO's assessment that the indications are erroneous due to the degradation of isolated temperature indication circuitry. Redundant temperature indications support this conclusion.

QUESTION 8: On October 19, 2011, the Commission approved a charter for the longer-term review of lessons learned from the Japanese earthquake and tsunami, and the Commission requested that the staff provide a status update every 6 months in the form of a paper. Will you agree to provide me with those update papers on the day that they are made available to the Commission?

ANSWER

Yes, I will ensure that you are provided with the papers on the same day that they are made available to the Commission.

QUESTION 9: In the August 2, 2011 hearing, I asked you whether you could move forward on the Task Force recommendations in 90 days, and four Commissioners said “yes” for some or all of the recommendations. However, the NRC had not taken any actions on any of the recommendations as of our December 15, 2011 hearing.

- a. Do you support conducting votes in public to increase public transparency and accountability?
- b. Do you support making your vote on all matters related to the Task Force recommendations available to the public on the day you vote to further increase transparency and accountability?

ANSWER

- a. I continue to support conducting votes in public to increase public transparency and accountability. In 2010, I proposed a new procedure for Commission voting, to replace the notation (written) voting. This plan called for public meetings, in which the Commission would discuss issues, exchange views, search for consensus and finally cast their votes.

I believe voting in public meetings would have several advantages over the current system. First, it would be far more efficient, eliminating the unnecessary and repetitive steps that currently bog down the process and freeing Commission resources to pursue additional priorities. Second, public sessions would make the policymaking process more effective by facilitating collaboration among Commissioners. Collaboration requires the free flow of ideas and dialogue that occurs during face-to-face meetings. This discussion can identify areas of confusion and crystallize points of disagreement,

enabling Commissioners to tackle them directly and to resolve them definitively. Third, deliberating and voting during public meetings would help ensure that the Commission conducts its business in a transparent and accountable manner that builds public confidence in the agency. Everyone will not always agree with the actions that the Commission takes, but the Commission can build long-term public credibility through processes that foster participation and greater understanding of its internal workings. Public meetings and public voting are the common practices of other federal agencies for just these reasons.

- b. I routinely release my votes to the public within two days after voting in order to provide my colleagues with an opportunity to review my vote and discuss it with me. I will commit to same day release on future Fukushima related items.

QUESTION 10: To what extent do you think the swift implementation of the lessons learned from Fukushima is good for public support of, and confidence in the safety of, nuclear power?

ANSWER

I believe swift implementation of the lessons learned from Fukushima is vital not only to public support and confidence, but also in ensuring our mission. The NRC's Near Term Task Force did an outstanding job in helping us to understand what nuclear safety requires in a post-Fukushima world. Now the Commission must diligently and expeditiously respond to these recommendations, and make the best decisions to ensure the continued safety of the public.

There is much to be done, and certain recommendations require rules that may take months or years to develop, but we must move forward with the urgency called for by these safety issues.

This is not the first time we have undertaken a significant reevaluation of what nuclear safety and security requires. Nearly a decade ago, we worked to overhaul and strengthen the security of the nation's nuclear plants in the aftermath of the September 11th attacks. While we moved forward with short-term changes, it took the NRC and the industry almost 10 years to fully develop and implement that new framework.

I believe a similar timeframe would be unacceptable for safety changes in response to the lessons learned from the Fukushima accident. I have called for – and the Commission has committed to – implementing all Fukushima-related changes by 2016. Meeting this goal will require hard work, strong and decisive leadership from the Commission, and an even stronger commitment by our licensees to put safety first. But I believe that we are up to the task. This is not an NRC problem or a nuclear industry problem. This is an imperative for nuclear safety. The

American people are looking to everyone involved in nuclear safety—from the operators to the regulators—to do their part in continuing to protect the public.

Questions from Senator Carper

QUESTION 1.

During the December 15th hearing, I asked Chairman Greg Jaczko if the day-to-day NRC staff work was being compromised with the staff working on the Fukushima recommendations and the recent unrest between the Commissioners. Specifically, I asked about the licensing process for new reactors and the relicensing process for our current reactors. Chairman Greg Jaczko responded that there may be some delays in the relicensing process for our current reactors due to resource constraints.

Over the years, I have worked to ensure the NRC has the right amount of resources to do its job and ensure the Commission can protect public safety.

- a) Can you tell me how many staff were working on relicensing leading up to the Fukushima crisis and how many staff are working on relicensing today?
- b) How many additional staff are needed to ensure there are not any delays?
- c) In addition, I would like an update on all the relicense applications that are currently being reviewed by the NRC – including a timeline for each reactor from the day the application was docketed by the NRC to the estimated day the application is expected to be finalized.

ANSWER.

a. At the time of the Fukushima Event of March 11, 2011, 82 staff members were working on license renewal. Currently, 77 staff members are working on license renewal. Of the five staff member reduction, three of those were reassigned due to Fukushima support. There were also approximately 24 NRC staff members who were spending part of their time supporting license renewal reviews in March 2011. This number has remained steady over the last year.

b. Currently no additional staff are necessary to ensure there are not any license renewal delays due to Fukushima impacts. The staff is working to minimize any schedule changes on license renewal reviews due to supporting Fukushima lessons learned activities. Additionally, the license renewal process provides for "timely renewal," which allows a plant that has submitted a renewal application--and has made a good-faith-effort to complete the process--to continue to operate while the staff completes the review.

c. See the following table for a high-level summary of the current license renewal applications under review. Detailed information on each application and the corresponding review schedule can be found at the following website:

<http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>

<u>Plant</u>	<u>Application Date</u>	<u>Scheduled SER Date (actual dates in bold)</u>	<u>Scheduled FSEIS Date (actual dates in bold)</u>	<u>Expected Completion Date</u>
Pilgrim	1/27/06	6/28/07	7/27/07	In Hearing Process – Completion Date Unknown
Indian Point Units 2 & 3	4/30/07	8/11/09	12/03/10	In Hearing Process – Completion Date Unknown
Crystal River	12/18/08	TBD	TBD	TBD pending submittal of a repair plan to address containment concrete degradation
Diablo Canyon Units 1 & 2	11/24/09	6/2/11 To be supplemented as necessary	TBD	On hold at licensee's request pending submittal of updated seismic analysis
Columbia	1/20/10	2/12	4/12	6/12
Seabrook	6/1/10	TBD	TBD	TBD pending submittal of acceptable responses on concrete degradation
Davis-Besse	8/30/10	10/12	TBD	TBD pending submittal of updated analysis supporting environmental review
South Texas Project Units 1 & 2	10/28/10	10/12	10/12	2/13
Limerick Units 1 & 2	6/22/11	1/13	2/13	4/13

<u>Plant</u>	<u>Application Date</u>	<u>Scheduled SER Date (actual dates in bold)</u>	<u>Scheduled FSEIS Date (actual dates in bold)</u>	<u>Expected Completion Date</u>
Grand Gulf	11/01/11	4/13	7/13	9/13
Callaway	12/19/11	TBD	TBD	TBD

QUESTIONS FROM SENATOR INHOFE

QUESTION 1: The Near-term Task Force stated that “continued operation and continued licensing activities do not pose an imminent risk to public health and safety.” President Obama’s Executive Order 13579, “Regulation and Independent Regulatory Agencies” states that “Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation.” However, you criticized your colleagues’ desire for public participation following the Near-term Task Force report as a “preoccupation with process at the expense of nuclear safety.”

- a. Please explain why President Obama’s Executive Order does not apply in this situation.
- b. Please list any other Executive Orders that you believe you are justified in disregarding.

ANSWER.

The agency complies with Executive Orders that apply to it, and often voluntarily follows others. I fully support the principle that wise regulatory decisions are best made through informed public participation.

QUESTION 2: Please explain why, after repeatedly urging expeditious action on post-Fukushima recommendations and criticizing your colleagues for seeking public involvement, that you have been the last to vote in five of the seven related votes and second-to-last in a sixth, requesting nine separate extensions of voting time.

ANSWER.

I consider action on post-Fukushima recommendations to be the Commission's highest priority at this time. Therefore, it is crucial that the Commission acts in a timely, thoughtful and deliberate manner. My votes on post-Fukushima recommendations have been based on a thorough review of the underlying technical information, consideration of legal and policy implications, and have been further informed by my discussions with, and the votes of, my fellow Commissioners.

QUESTION 3: During the hearing, Commissioners Ostendorff and Apostolakis discussed a situation where the Director of the Office of New Reactors recommendation on the date for effectiveness of a licensing action was NOT the option recommended in the paper presented to the Commission.

- a. Did you or your staff discuss the preferred option with the Executive Director or his staff in an effort to change the recommended option?
- b. If so, please provide a detailed explanation as to how your and your staff's actions are consistent with the law and Internal Commission Procedures.
- c. If not, please explain how the recommended option was changed.
- d. Have you referred this matter to the Inspector General?

ANSWER.

I discussed the matter with the Director of the Office of New Reactors and all of my actions were consistent with my statutory responsibilities as the principle executive officer of the Commission, and for developing policy planning and guidance.

- QUESTION 4:** In your December 7, 2011, letter to Mr. William Daley, you wrote that the Commission's dysfunction arises from "the lack of understanding the current Commissioners have of their statutory roles at the agency."
- a. Have you attempted to lead the Commission in a discussion to resolve these differing role interpretations?
 - b. In the revision to Internal Commission procedures issued on September 7, 2011, did you propose revisions to resolve this situation?
 - c. Please provide all draft Staff Requirement Memorandums, all of your responses to each draft, all of your associated voting records, transcripts of meetings and other documents relevant to the revision of Internal Commission Procedures. (SECY)

ANSWER.

As you note, the Commission recently revised the Internal Commission procedures. Unfortunately, voting on the procedures was initiated by my colleagues outside of our agenda planning process, where the Commissioners meet and collegially decide the priority and timing of voting matters, just as I was leaving to travel abroad on Commission business. Nevertheless, during the deliberative voting process that ensued, my office engaged in dialogue on the proposed changes with the other Commission offices and proposed edits accordingly.

- QUESTION 5:** The NRC Inspector General reported this past June that you “said the Commission procedures are a guideline, and not absolute rules.” However, the 1980 Reorganization Plan Section 2(c) states: “The Chairman as principal executive officer. . . shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations, including those for reorganization proposals, budget revisions, and distribution of appropriated funds, as the Commission may, by law, including this Plan, be authorized to make.”
- a. Please specify which Commission procedures you believe a chairman is required to follow and which ones he can ignore. For each, please list the statutory basis that supersedes Section 2(c) of the 1980 Reorganization Act.

ANSWER.

As Chairman, I fully appreciate and take my responsibilities under the Reorganization Plan very seriously. Our internal procedures are guidelines that describe how the Commission operates, and flexibility is sometimes required to ensure the Commission's business is carried out effectively.

QUESTION 6. Please provide a copy of the then-Commission's response to the NRC Inspector General's 1999 report, "Special Evaluation of the Role and Structure of the NRC's Commission."

ANSWER.

The NRC Inspector General's 1999 Report is provided as Attachment 1.

QUESTION 7. Please describe any limitations under the Sunshine Act that would limit or prohibit private meetings between all five commissioners and a third-party mediator.

ANSWER.

Meetings between the five Commissioners and a third-party mediator could potentially be held in private. However, as discussed below, the Sunshine Act limits what could be discussed at such meetings.

Subject to certain enumerated exceptions, the Government in the Sunshine Act (5 U.S.C. § 552b) (Sunshine Act, or Act) prohibits a quorum of the Commission (i.e., three or more Commissioners) from meeting in private to deliberate "where such deliberations determine or result in the joint conduct or disposition of joint agency business." See §§ 552b(a)(2), (b), (c), and (e). There are, however, certain types of discussions involving a quorum of NRC Commissioners that would not implicate the Sunshine Act at all, making it unnecessary to assess the applicability of Sunshine Act exemptions or adhere to the Act's various procedural requirements for closed meetings. Such discussions are sometimes referred to as "non-Sunshine Act discussions." The Supreme Court confirmed the permissibility of such discussions in *FCC v. ITT World Communications, Inc.*, 466 U.S. 463, 471 (1984), by recognizing that Congress had carefully crafted the Sunshine Act's "meeting" definition in § 552b(a)(2) to exclude certain types of discussions from the Sunshine Act's reach. Under the Sunshine Act, if a discussion does not qualify as a "meeting" under the Act's definition, the Act's restrictions and procedures do not apply.

In line with the *ITT World* decision, NRC's Sunshine Act implementing regulations define "meeting" to encompass only "discussions [that] are sufficiently focused on discrete proposals or

issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency." 10 C.F.R. § 9.101(c). In a *Federal Register* notice associated with this rule language, the NRC included "[h]ow well is the agency functioning" as an example of a potential non-Sunshine Act discussion topics, at least where the discussion stays at a "generalized 'big picture'" level. *Government in the Sunshine Act Regulations: Final Rule*, 64 Fed. Reg. 24,941 (May 10, 1999). The Commission's Internal Commission Procedures, available online at <http://www.nrc.gov/about-nrc/policy-making/internal.html>, further describe non-Sunshine Act discussions as "preliminary, informal, informational, or 'big picture.'" Internal Commission Procedures at IV-9.

Accordingly, a discussion between the five Commissioners and a mediator could presumably qualify as a non-Sunshine Act discussion, and thus be held in private, so long as the discussion focuses solely, and in a relatively generalized way, on the Commission's functioning as a collegial body and does not attempt to work towards resolution of specific items of business that are pending, or expected to be pending, before the agency.

QUESTION 8: You said in testimony that you are committed to working to address your colleagues concerns. Please explain precisely what actions you have taken and plan to take and the dates by which you plan to take them.

ANSWER.

As Chairman, my focus is on a productive working relationship between Commissioners. This Commission brings a breadth of experience and expertise to bear on matters of nuclear safety and security. I have great respect for the experience and expertise of my colleagues, and I am committed to working effectively with them to continue fulfilling our critical safety and security mission.

- QUESTION 9: Do you believe harassment and intimidation are acceptable workplace practices at the NRC?**
- a. If so, please describe the conditions and/or situations that would warrant such practices.**
 - b. If not, please describe what actions you plan to take to address the allegations of your harassment, intimidation, verbal abuse, and retaliation against agency professionals.**

ANSWER.

Harassment and intimidation are never acceptable workplace practices and are not tolerated at the NRC. Our policy against harassment, which can be found on our website, makes this clear to all NRC employees. The policy specifies the processes by which employees can report harassment and by which a prompt, independent investigation is conducted. In addition to this policy, employees have a number of other avenues available to them, including our Equal Employment Opportunity Commission process and union and administrative grievances, to seek redress from harassment. Importantly, all information that is disclosed during these processes is kept strictly confidential to protect the privacy of the individuals involved.

QUESTION 10. Please provide a copy of the Nuclear Regulatory Commission's (NRC's) policy statement regarding harassment and intimidation of its employees, relevant definitions of such behavior and avenues for recourse by employees who have experienced such treatment.

ANSWER.

NRC's Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace (NRC Harassment Policy) is provided as Attachment 2..

- QUESTION 11:** When did you first become aware of each of the allegations of intimidation, bullying, harassing, and or retaliatory behavior discussed at our hearing or at the December 14 hearing before the House Oversight and Government Reform Committee? Please list the date, the alleged incident, and the person from whom you learned of it?
- a. For each of these, did you refer the matter to the Inspector General?
 - b. For those you did not, why not?
 - c. Did you discuss any of these with Mr. William Daley, the White House Chief of Staff? Please list those that were the subject of discussions.

ANSWER.

The NRC keeps all information regarding such allegations confidential to protect the privacy of the individuals involved.

QUESTION 12:

In your December 7 letter to Mr. William Daley, you took responsibility for improving the level of the Commission's dialogue. One of your very first acts after penning that letter, merely three days later, was to have your Director of Public Affairs urge press reporters to read the report issued by Rep. Markey, "REGULATORY MELTDOWN: How Four Nuclear Regulatory Commissioners Conspired to Delay and Weaken Nuclear Reactor Safety in the Wake of Fukushima," This report is remarkable in its unflinching criticism of your colleagues, with whom you expressed such a keen desire to meet with and improve communications at our December 15 hearing. Please answer the following questions:

- a. Did you or your staff direct the Director of Public Affairs to refer reporters to the Markey report?
- b. If so, who did and when?
- c. Please provide any emails, notes of conversations, or phone logs conveying such direction.
- d. Did you, or your staff, or the Director of Public Affairs gain approval of the full Commission that the Markey report accurately represented Commission policy?
- e. Considering that you are the official spokesman for the agency and the Director of Public Affairs is your direct responsibility, and given the fact that the Director of Public Affairs, contrary to his office's mission, actively advocated a report which you admitted undermines public confidence in the agency, have you taken, or do you plan to take, disciplinary action against him?

- f. Do you plan to apologize to your colleagues and the agency for the Director of Public Affairs' inappropriate actions?**
- g. If you have not and will not take disciplinary action or apologize for the Director of Public Affairs' actions, then please tell me how his actions are consistent with your responsibility to improve communications among your colleagues and yourself.**

ANSWER.

Neither I nor my staff directed the Director of Public Affairs to refer reporters to Congressman Markey's publicly available report. I have full faith and confidence in my Director of Public Affairs and, beyond that, do not consider it appropriate to discuss supervisory matters publicly.

- QUESTION 13:** During the December 15 hearing, you testified, saying it was in the interest of candor that you might have to pull resources from license renewal efforts because of resource constraints.
- a. Had you discussed this possibility with the Executive Director, the Chief Financial Officer, or the Director of Nuclear Reactor Regulation prior to making your statement on December 15?
 - b. Please provide any documents or records on this matter including memos, e-mails, phone records, and any other relevant documents.
 - c. Did you discuss this matter with your colleagues prior to your testimony before this Committee on December 15th?
 - d. If not, why not, in light of your commitment to improve communications with them?

ANSWER.

The resources required to perform the necessary Fukushima work during this fiscal year have and will come from a variety of sources throughout the agency. The staff continues to assess the resource needs to address the Fukushima lessons learned and where additional resources could be made available. A variety of possibilities have been discussed, including the possibility of moving resources from license renewals to address Fukushima work which was first raised to me by the Director of Nuclear Reactor Regulation.

QUESTION 14. Please summarize all actions taken to re-evaluate the safety and security of nuclear power plants in the United States, and to implement the recommendations of the Near-Term Task Force's 90-day report. Please include a timetable of all relevant implementation dates for projected actions and those already taken.

ANSWER.

Consistent with the NRC mission of ensuring the protection of public health and safety, the NRC is taking action as a result of lessons learned from the events at the Fukushima Dai-ichi nuclear power plant. In April 2011, the Commission established a senior-level task force known as the Near-Term Task Force (NTTF) to conduct both a short- and long-term analysis of potential lessons-learned. The report produced by the NTTF, SECY-11-0093, "Near Term Report and Recommendations for Agency Actions following the Events in Japan," dated July 12, 2011, identified twelve major recommendations with the potential to improve the safety of U.S. nuclear facilities.

Consistent with Commission direction, the NRC staff is taking action on these NTTF recommendations. The NRC staff sought external stakeholder feedback in a public meeting on August 31, 2011, regarding the NTTF recommendations that stakeholders consider to be most important and that the NRC should undertake in the near-term. These recommendations were identified in a notation vote paper (SECY-11-0124, "Recommended Actions to be taken Without Delay from the Near-Term Task Force Report"), dated September 9, 2011. A Commission meeting was conducted on September 14, 2011, during which representatives from other Federal and state agencies, the nuclear industry, and interested non-governmental organizations provided their views on the NRC staff's proposed near-term actions.

On October 18, 2011, the Commission directed the NRC staff to begin action without delay on those NTTF recommendations with the greatest potential for safety improvement in the near-term. The Commission directed that the NRC staff should strive to complete and implement the lessons-learned from the Fukushima Dai-ichi accident within 5 years – by 2016. In addition, the Commission directed that the staff should designate the station blackout (SBO) rulemaking as a high-priority rulemaking with a goal of completion within 24-30 months of the October 18, 2011 direction.

The staff is implementing the Commission direction and has begun taking actions on those NTTF recommendations with the greatest potential for safety improvement without delay. In order to do this effectively, the staff performed an assessment of each NTTF recommendation to determine the required regulatory activities, an estimated schedule, and associated resource impacts. Once this information was attained, the staff began to prioritize the NTTF recommendations into three tiers: Tier 1, Tier 2, and Tier 3. To further inform the prioritization of the NTTF recommendations, the NRC staff conducted a public meeting with representatives of the nuclear industry on September 21, 2011, in order to better understand their current plans and actions to address the lessons-learned from the Fukushima Dai-ichi event. The NRC staff's proposed prioritization of all of the NTTF recommendations was submitted in a notation vote paper (SECY-11-0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned") dated October 3, 2011. A Commission meeting was conducted on October 11, 2011, during which representatives from other Federal and state agencies, the nuclear industry, and interested non-governmental organizations provided their views on the NRC staff's proposed prioritization.

SECY-11-0137 was reviewed by the Commission and on December 15, 2011, the Commission approved the staff's recommended prioritization. The Commission also listed the following staff requirements:

1. Consult with the Commission via notation vote papers before issuing any orders that would lead to a change in the design basis of licensed plants.
2. Inform the Commission 5 business days before issuing letters under 10 CFR § 50.54(f) associated with the regulatory activities outlined in SECY-11-0137.
3. Inform the Commission of the results of its review of six additional staff recommendations, that went beyond those prepared by the NTTF, but which the staff determined had a clear nexus to the Fukushima Dai-ichi event and may warrant additional action. This includes the results of the staff's consideration of filtration of containment vents in the context of the existing Tier 1 issues on hardened reliable vents for boiling water reactor (BWR) Mark I and Mark II containments.
4. Inform the Commission of how the staff addressed Advisory Committee on Reactor Safeguards (ACRS) recommendations, dated November 8, 2011.
5. Initiate a probabilistic risk assessment (PRA) methodology to evaluate potential enhancements to the capability to prevent or mitigate seismically induced fires and floods as part of Tier 1 activities described in SECY-11-0137.

Most recently, in response to recent legislative expectations and input it received from stakeholders, the staff has accelerated the schedule originally proposed in SECY-11-0137, with

a goal of issuing the Tier 1 orders and a request for information letter before the first anniversary of Japan's March 11, 2011, Great Tōhoku Earthquake and subsequent tsunami. As such, on February 17, 2012, the staff provided a notation vote paper to the Commission, SECY-12-0025 to address Commission requirements and to communicate the staff's proposed orders and request for information. SECY-12-0025 is publicly available and is currently under review by the Commission.

Relevant implementation dates and projected actions are as follows:

Schedule Overview for Orders:

Milestone	Operating Reactors	Combined License Holders	Construction Permit Holders
Guidance Issued	August 31, 2012	August 31, 2012	August 31, 2012
1st Update	October 31, 2012	October 31, 2012	October 31, 2012
Plan Submitted	February 28, 2013	August 31, 2013	August 31, 2013
Periodic Updates	Every six months	Every six months	Every six months
Latest Completion	December 31, 2016	Prior to initial fuel load	Prior to receipt of operating license

Schedule Overview for 50.54(f) Letter on Seismic and Flooding Reevaluations:

Milestone	Operating Reactors and Construction Permit Holders
Guidance Issued	November 30, 2012
Initial Response	January 30, 2013
Licensee Seismic Hazard Evaluations Due	September 9, 2013 (CEUS) / March 9, 2015 (WUS)
Licensee Flooding Hazard Evaluations Due	March 9, 2013 – March 9, 2015 (based on prioritization)
Future Steps	Pending NRC evaluation and prioritization, with completion of evaluations for all facilities between October 2016 and April 2019

Schedule Overview for 50.54(f) Letter on Seismic and Flooding Walkdowns:

Milestone	Operating Reactors
Guidance Issued or Endorsed	~ May 2012
Licensees Identify Walkdown Procedures To Be Used	June 9, 2012 (flooding) / July 9, 2012 (seismic)
Licensees Provide Results of Walkdowns	180 days after NRC endorsement of the walkdown procedure (~November 2012)

Schedule Overview for 50.54(f) Letter on Enhanced EP Staffing and Communications:

Milestone	Operating Reactors, Combined License Holders, and Construction Permit Holders
4.2 Guidance Issued or Endorsed	August 31, 2012
Licensee Responses	June 9, 2012 (communications) June 9, 2012 (staffing items 3 through 6) October 31, 2012 (staffing items 1 and 2)*
<small>* 60 days after issuance of guidance associated with Recommendation 4.2 order</small>	

ATTACHMENT 1

**Nuclear Regulatory Commission Policy and Procedure for
Preventing and Eliminating Harassing Conduct in the Workplace**

i. Purpose

This Policy is intended to ensure that the Nuclear Regulatory Commission (NRC) takes appropriate action to accomplish the following:

Prevent sexual harassment and other forms of harassing conduct based on race, color, religion, sex, national origin, age, disability, sexual orientation, and retaliation for engaging in protected Equal Employment Opportunity (EEO) activity in the workplace;

Ensure that employees, supervisors, and managers are aware of their rights and responsibilities in maintaining a work environment that is free from harassing conduct and the options available for reporting claims of harassing conduct;

Provide an expedited, fair, and impartial process for reviewing allegations of harassing conduct as defined in this Policy;

Correct harassing conduct, as defined in this Policy; and

Administer corrective action, which may include disciplinary action, to any employee who violates this Policy.

This Policy updates the agency's long-standing policy on the prevention of sexual harassment in the workplace. It is separate and apart from any collective bargaining agreement (CBA) or statutory complaint process, or other agency policy involving harassment. [See Section X.] Furthermore, this Policy does not alter the right of an employee to report harassing conduct to the Office of the Inspector General (OIG) or to file a complaint with the Office of Small Business and Civil Rights (SBCR).

ii. Authorities

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (Title VII); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a (ADEA); the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; Executive Order (E.O.) 11478, as amended by Executive Order 13087, May 28, 1998; Equal Employment Opportunity Commission's (EEOC) *Model EEO Programs Must Have An Effective Anti-Harassment Program* (2005); EEOC's Manual Directive 715 (2003); EEOC's Enforcement Guidance: *Vicarious Employer Liability for Unlawful Harassment by Supervisors* (1999); *Faragher v.*

Boca Raton, 514 U.S. 775 (1998); and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998.)

III. The Definition of Harassing Conduct

For purposes of this Policy, harassing conduct is defined as any unwelcome verbal, visual, physical or other conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, or retaliation for participation in protected EEO activities. To constitute harassing conduct under this Policy, one of these two conditions must be present:

- A. The behavior reasonably can be considered to affect the work environment adversely; or
- B. An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Examples of unwelcome prohibited conduct under part A of the definition include, but are not limited to offensive remarks or comments; ridicule; offensive and derogatory words, phrases, epithets, or jokes; suggestive comments and unwelcome requests for sexual favors; exposure to offensive photographs, explicit drawings, cartoons, e-mails, or internet transmissions; touching; pinching; grabbing; gesturing; or stalking.

Examples of unwelcome prohibited conduct under Part B of the definition include, but are not limited to promoting or not promoting an employee; or taking or not taking a personnel action affecting the employee's conditions of employment based on the employee accepting a date or sexual favor.

IV. Policy

It is the Policy of the NRC that harassing conduct by anyone in the workplace is unacceptable and will not be condoned. NRC will maintain a work environment free from the harassing conduct described above. The NRC has determined that the most effective way to maintain such a work environment is to inquire promptly into allegations of harassing conduct and, if proven true, treat the offense as misconduct, even if it is not sufficiently severe or pervasive to constitute discriminatory harassment actionable under the civil rights laws.

The current EEO complaint process provides employees specific remedies for unlawful harassment that has already occurred. This NRC Policy, however, is focused on stopping harassing conduct at its earliest stage. A hostile environment that violates EEO law usually requires a showing of a pattern of offensive conduct. Under this Policy, however, the NRC will not wait, nor should the employee wait, for such a pattern to

emerge. The NRC will, where possible, act to stop and correct harassing conduct before it becomes unlawful; that is, before it becomes so pervasive or severe as to create an unlawful hostile work environment. Accordingly, the NRC encourages all employees to report any incident of harassing conduct forbidden by this Policy immediately so that complaints can be resolved quickly and fairly. If the NRC is not made aware of harassing conduct, it cannot stop it.

In addition, NRC will not tolerate retaliation against any employee who makes a good faith report of harassing conduct under this Policy or any other policy or procedure, or for assisting in any inquiry about such a report. Allegations of retaliation will be handled in accordance with the procedures outlined in this Policy.

Allegations of harassing conduct will be addressed as promptly as possible. Employees found to have violated this Policy will be held accountable for their actions and may be appropriately disciplined in accordance with 5 U.S.C. Chapter 75.

V. Roles and Responsibilities

A. Agency Employees

Each agency employee is responsible for creating and maintaining a work environment that is free from harassing conduct and is expected to do the following:

1. Comply with the Policy;
2. Attend a briefing on this Policy and Procedures;
3. Refrain from exhibiting harassing conduct;
4. Promptly report any incident of harassing conduct in accordance with the Procedures in Section VI.; and
5. Cooperate with any inquiry conducted under this Policy.

B. Managers and Supervisors

In addition to the requirements in A. above, each agency manager and supervisor is responsible for the following activities:

1. Handling allegations of harassing conduct promptly and appropriately in accordance with the procedures Section VII.;

2. Implementing interim measures to protect alleged victims of harassing conduct pending the outcome of the inquiry and to ensure that further alleged misconduct does not occur;
3. Administering appropriate corrective action, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
4. Taking action to prevent retaliation against individuals who make good faith reports of an allegation of harassing conduct or participate in any inquiry into an allegation of harassing conduct; and
5. Consulting with the agency Designated Official (DO) with respect to all appropriate actions under items B. 1. through 4. above.

C. Director, Office of Human Resources

The Director, Office of Human Resources (OHR) is responsible for the following actions:

1. Ensuring that employees are informed of this Policy and the procedures to follow in connection with reporting harassing conduct by disseminating this Policy statement periodically to all employees and posting it on the NRC intranet website;
2. Ensuring that managers, supervisors, and employees are provided appropriate training on this Policy;
3. Identifying the Designated Official (DO); and
4. Ensuring that the identity of the DO is prominently displayed throughout the agency and on the NRC intranet and the identities of the Regional Personnel Officers are prominently displayed in the Regions.

D. Agency Designated Official

The agency's Designated Official (DO) is responsible for the following actions:

1. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII., below;

3. Determining whether an allegation falls within the jurisdiction of this Policy or otherwise interpreting and implementing this Policy;
4. Referring allegations received under this Policy to the Office of the Inspector General (OIG) for possible investigation;
5. Conducting or overseeing prompt, fair, and impartial inquiries into any allegation of harassing conduct. If the OIG decides not to make an inquiry on a referral received under this Policy, the DO has the authority to determine who will conduct the inquiry into any allegation of harassing conduct, including him/herself;
6. Advising managers and supervisors on implementing interim measures to protect alleged victims of harassing conduct pending the outcome of the inquiry and to ensure that further harassing conduct does not occur;
7. Advising managers and supervisors on administering appropriate corrective action, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
8. Advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged harassing conduct or participate in any inquiry into an allegation of harassing conduct;
9. Deciding whether to arrange for mediation services to resolve a dispute arising under this Policy. Mediation services may be offered from a variety of sources including the DO, the Federal Mediation and Conciliation Service, Office of Small Business and Civil Rights (SBCR), a contract mediator, and the HHS Sharing Neutrals Program;
10. Making the Director, SBCR aware of all allegations of harassing conduct under this Policy and actions taken to address such allegations;
11. Providing technical assistance and support, to ensure compliance with this Policy;
12. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act 5 U.S.C. 552a; and
13. Informing all persons reporting allegations that filing a report of harassing conduct under this Policy does not satisfy the requirements to initiate an

EEO complaint, a Merit Systems Protection Board (MSPB) appeal or a grievance; nor does it delay the time limits for initiating those procedures.

E. Regional Personnel Officer

The Regional Personnel Officer (RPO) is responsible for the following actions:

1. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII.;
3. Promptly advising the DO and the Regional Administrator of any allegations reported under this Policy;
4. In coordination with the DO, conducting or overseeing prompt, fair and impartial inquiries into any allegation of harassing conduct;
5. In coordination with the DO, advising managers and supervisors on implementing interim measures to protect alleged victims of harassing conduct pending the outcome of the inquiry and to ensure that further harassing conduct does not occur;
6. In coordination with the DO, advising managers and supervisors on administering appropriate corrective action, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
7. In coordination with the DO, advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged harassing conduct or participate in any inquiry in an allegation of harassing conduct; and
8. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act, 5 U.S.C. 552a.

F. Director, Office of Small Business and Civil Rights (SBCR)

The Director, SBCR is responsible for the following actions:

1. Processing any EEO complaint of discrimination filed under 29 CFR § 1614;
2. Providing technical assistance and support, to assure compliance with this Policy;
3. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
4. Assisting the Director, OHR, and DO in providing training under this Policy; and
5. Informing the DO of allegations of harassing conduct, to the extent permitted by law and EEO regulation.

G. Office of the Inspector General (OIG)

The OIG is responsible for:

1. Cases referred from the DO: for allegations that it decides to investigate, OIG will conduct an appropriate inquiry; if substantiated, OIG will refer the findings of the inquiry to NRC management for appropriate action;
2. Cases not referred from the DO:
 - A. For allegations that it decides to investigate, the OIG will conduct an appropriate inquiry; if substantiated, the OIG will refer the findings of its inquiry to NRC management for appropriate action;
 - B. For cases it decides not to investigate, the OIG will refer the matter to the DO for action, if any; and
 - C. For record keeping purposes, at the end of any investigation, the OIG will report allegations of harassing conduct to the DO.
3. For all cases in which the OIG conducts an inquiry into harassment allegations or misconduct, the OIG will report situations which it determines warrant prompt NRC management action to the DO.

VI. Reporting Harassing Conduct

The procedures for reporting harassing conduct are as follows:

- A. A headquarters employee who believes that he or she has been the subject of an incident of harassing conduct or who has witnessed harassing conduct and/or retaliation in violation of this Policy must report this matter to anyone in his/her management chain or to the DO;
- B. A regional employee who believes that he or she has been the subject of an incident of harassing conduct or who has witnessed harassing conduct and/or retaliation in violation of this Policy must report this matter to anyone in his or her chain of command, to the DO, or to the Regional Personnel Officer (RPO). The RPO is then responsible for reporting this matter to the DO;
- C. The employee reporting such conduct will be asked to provide details of the incident(s), including but not limited to: what occurred, when the incident(s) occurred; name of the alleged harasser and names of any witnesses. Once a report of harassing conduct is made under this Policy, the agency has a duty to conduct an appropriate inquiry, stop harassing conduct if found, and to take appropriate action, including disciplinary action;
- D. Nothing in this Policy is intended to discourage an employee from telling the alleged harasser to stop the harassing conduct;
- E. Nothing in this Policy is intended to require that an employee communicate with the alleged harasser;
- F. Nothing in this Policy affects the right of an individual to contact the OIG regarding alleged harassing behavior; nor does it affect the right of an individual to participate in the EEO complaint process, file an appeal with the MSPB, an agency administrative grievance, or for bargaining unit employees, initiate a grievance under the NRC-NTEU CBA. Filing a report of harassing conduct under this Policy **does not** satisfy the requirements associated with any complaint, appeal or other statutory or regulatory process that may apply, **nor does it delay the time limits** for initiating those procedures. Section X. provides further information on statutory and collective bargaining claims; and
- G. All information will be maintained in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

VII. Conducting an Inquiry

- A. A supervisor or manager who receives an allegation or witnessed harassing conduct shall immediately:
 - 1. Inform the DO of the allegation;

2. In consultation with the DO, take appropriate action to stop any potentially harassing conduct and prevent further alleged incidents while the allegations are being investigated, (i.e., providing appropriate interim measures); and
 3. Document the allegation received or witnesses and his/her efforts to address it.
- B. If the RPO receives an allegation of harassing conduct, he/she will promptly notify the DO and the Regional Administrator and provide further assistance as requested by the DO.
- C. When the DO receives an allegation of harassing conduct, either directly from the complainant; through a supervisor, manager, or RPO; or from other sources, the DO will take the following actions:
1. Ensure that the OIG is immediately provided all pertinent information regarding the allegation;
 2. In the event that the OIG elects not to investigate the matter, the DO shall ensure that a prompt, vigorous, impartial and appropriate inquiry is conducted and designate the person(s) who will conduct such an inquiry. (This inquiry may be conducted by the DO, the supervisor, the RPO, an outside contractor, or any other impartial individual delegated this responsibility by the DO); and
 3. Contact appropriate agency officials in the alleged harasser's chain of command who are not involved in the allegations of harassment and recommend appropriate action to stop any harassing conduct and prevent further harassing conduct while the allegations are being addressed, (i.e., providing appropriate interim measures).
- D. The inquiry will consist of appropriate fact-finding in order to obtain the information relevant to the allegation. As part of the inquiry, the complaining employee may be interviewed regarding the basis of the allegations. Additionally, the alleged harasser as well as other witnesses who may have knowledge of the circumstances of the allegations may also be interviewed. The determination as to the appropriate steps to be followed during the inquiry will be determined by the person conducting the inquiry with oversight by the DO. All individuals contacted in the course of an inquiry will be advised that any retaliation or reprisal against an individual who is an alleged target of harassing conduct, who has made a complaint under this Policy, or who has provided information in connection with a complaint, constitutes a separate violation of this

Policy. The inquiry will be completed promptly absent extenuating circumstances.

- E. An inquiry is a neutral, fact-finding process needed to determine whether harassing conduct has occurred. An inquiry shall not, in and of itself, be construed as evidence that the allegations of harassing conduct are true.
- F. When an inquiry by management discloses new, significant information regarding allegations of misconduct by management or employees, the OIG will be notified of these additional facts and provided an opportunity to assume jurisdiction over the matter. However, this is not intended to preclude NRC management from taking appropriate immediate action to carry out its responsibilities to maintain a safe and orderly workplace or to otherwise protect agency interests associated with this Policy.
- G. Upon completion of the inquiry, the individual conducting the inquiry will prepare a written summary of the inquiry. The DO shall determine whether sworn declarations will be taken. The summary will be prepared promptly after completion of the inquiry. The summary, along with all of the documentation compiled during the inquiry, will be provided to the DO (if he/she did not conduct the inquiry) and generally the first level supervisor of the alleged harasser, unless such supervisor is involved in the allegation. In this situation, the summary and documentation will be provided to the lowest level supervisor/manager in the alleged harasser's chain of command who is not a subject of the inquiry.
- H. All information will be maintained on a confidential basis to the greatest extent possible and in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

VIII. Action To Be Taken Upon Completion Of The Inquiry

- A. Upon receipt of the report of inquiry, including summary and supporting documentation, the appropriate supervisor/manager will promptly evaluate all of the documentation and determine the appropriate action. This responsibility normally will rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct, unless such supervisor is involved in the allegation. The supervisor/manager should consult with the OHR, including the DO, the servicing Labor and Employee Relations Specialist, and the Office of General Counsel as needed to determine the appropriate action.
- B. Where the inquiry establishes that an employee did engage in harassing conduct under this Policy, he/she will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.

- C. Where the inquiry establishes that a supervisor or manager did not properly carry out the responsibilities under this Policy, he/she will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.
- D. The DO should notify SBCR and the OIG of the outcome of the agency inquiry, including whether the allegation was substantiated, what corrective action was taken; and any other action taken to address the matter.

IX. Confidentiality

The maintenance of records and disclosures of information from records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. All information obtained under this Policy, including but not limited to, reports of harassing conduct, will be maintained confidentially to the greatest extent possible. Such information, however, may be required to be disclosed in connection with proceedings resulting from the harassing conduct, (e.g., disciplinary action). Further, information may need to be disclosed to those officials and employees within the agency with a need to know in order to carry out the purpose and intent of this Policy.

X. Statutory and Collective Bargaining Claims

This Policy is in addition to statutory and collective bargaining prohibitions [NRC-NTEU CBA, Article 2] against harassment and the procedures and remedies they provide for addressing unlawful harassment. Filing a report of harassing conduct under this Policy **does not** satisfy the requirements to initiate any complaint, appeal or other statutory or regulatory process that may apply, **nor does it delay the time limits** for initiating those procedures. An employee who chooses to pursue statutory or collective bargaining remedies for unlawful harassment must:

1. Initiate the EEO complaint process pursuant to 29 C.F.R. 1614.105 (available for all claims of unlawful harassment other than those based on sexual orientation) by contacting an EEO counselor in the SBCR within 45 calendar days from the date of the alleged harassment (or personnel action if one is involved); or
2. File a grievance under the CBA, Article 51 or agency grievance procedure; or
3. File an appeal to the MSPB within 30 days of an appealable action as defined in 5 C.F.R. Section 1201.3.;
4. If an employee pursues a claim of harassment through the formal EEO process (including EEO counseling), an MSPB appeal, a union grievance, or an administrative grievance, the agency official who receives the information about such a claim will promptly notify the DO, unless inconsistent with applicable

requirements. Because the agency has an obligation to comply with the terms of this Policy regardless of whether a statutory or collective bargaining procedure has been invoked, the DO will promptly initiate an inquiry into the matter if an appropriate management official has not already done so. Similarly, the DO will provide the Office handling the statutory or collective bargaining claim the record of actions taken under this Policy.

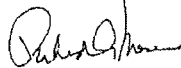


UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

ATTACHMENT 2

January 13, 2000

MEMORANDUM TO: Hubert Bell
Inspector General

FROM: Richard A. Meserve 

SUBJECT: SPECIAL EVALUATION OF THE ROLE AND STRUCTURE
OF THE NRC'S COMMISSION

The Commission has reviewed the above-captioned report and has requested that I forward some comments on it.

We understand the considerable effort that the Office of Inspector General has invested in preparing the report. The Commission has given serious consideration to the suggestions, as well as the supporting analysis and observations. Moreover, although some formal and structured opportunity for the Commission to review and comment on a draft report, as is common for OIG and GAO audit reports, might have been a helpful step in improving the report, each of the Commissioners has asked me to relay their appreciation for the individual briefings that you have provided over the past month.

The report contains several suggestions that warrant careful examination. We perceive, however, that the report may not adequately reflect the reality that the Commission is a dynamic institution which must adapt to changing circumstances. Thus, in the absence of some analysis of those circumstances, simple numerical comparisons with the agency as it existed in the early 1980s, or with agencies all of whose budgets are smaller than the NRC's and whose Commissioners' staffs consist almost entirely of attorneys, are not instructive. Moreover, the assessments of the Commission as it existed at the time of the staff survey may no longer be accurate and may be of very limited applicability to so fundamental a subject as "the Evaluation of the Role and Structure of the NRC's Commission". As the report acknowledges, Congress created the agency as a Commission in order to assure that the independent viewpoints of five individuals are brought to bear in addressing the policy issues that confront us. The independence of each of the Commissioners is thus a central value that Congress has sought to ensure. Given this basic objective, we believe that the Commission should not intrude on how each individual Commissioner decides to structure his or her personal staff or define "performance measures" to judge the performance of a Commissioner or the Commission itself. After all, the agency's goals and performance measures are not different from the Commission's.

Although 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. The resultant Internal Commission Procedures of June 30, 1998, sought to define the Commission's duties and responsibilities in accordance with the Energy Reorganization Act of 1974 and the Reorganization Plan No. 1 of 1980. The report also suggests that the Commission should develop guidance as to when individual members can state their differing views on issues after the agency has announced an official position. We believe, however, that in performing the duty to pursue sound public policy, each Commissioner must have the right to speak as his or her conscience directs. Indeed, we believe that we are more likely to reach better decisions and to instill greater public confidence in those decisions if the commission follows a policy of openness, thereby demonstrating that each issue is and has been forthrightly confronted and explored. Of course, care must be taken to assure that independent views are not perceived to be agency positions. To our knowledge, Commissioners have made clear in most cases when they were stating positions that were their own rather than agency positions. Nonetheless, the preservation of the right for a Commissioner to speak out is the best way to assure the public that the NRC is prepared to address issues freely and openly.

In sum, although there are some aspects of the report with which we disagree, we appreciate your efforts and take your suggestions very seriously.

cc: Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

Senator BOXER. Thank you very much.
Mr. Magwood, do you have any comments? You have 3 minutes.

**STATEMENT OF HON. WILLIAM D. MAGWOOD, IV,
COMMISSIONER, U.S. NUCLEAR REGULATORY COMMISSION**

Mr. MAGWOOD. Thank you, Chairman. Good morning, Chairmen Boxer and Carper, Ranking Members Inhofe and Barrasso. Thank you for the opportunity to speak with you again on this important topic.

When we last appeared before this Committee on August 2nd, just a few weeks after the issuance of the Near-Term Task Force report, among others, Chairman Boxer emphasized the importance with which she viewed applying the lessons of Fukushima to this country's nuclear infrastructure, and doing so as quickly as possible. We took your encouragement to heart and used it to challenge ourselves.

Within 2 weeks of the last hearing, this Commission completed its first vote on the Task Force recommendations. We agreed unanimously to direct staff to begin immediately its engagement with stakeholders and to identify within 3 weeks those actions which could be implemented without delay, an approach that I actually suggested and my colleagues supported.

This led to what we now call the 21-day paper, which the Commission adopted by mid-October. As a result of this decision, several key areas of work are already well underway. The NRC staff has held numerous meetings with industry, public interest group and other members of the public to formulate rulemakings, orders, and other regulatory tools that we needed to implement several of the higher priority Task Force recommendations.

We have also recently finalized our guidance, as the Chairman mentioned a few minutes ago, to the staff on all actions that the agency will pursue over the coming years to respond to the lessons of Fukushima.

Our work has benefited tremendously from stakeholder interactions. Areas that the Task Force had not raised in its report are now prominent elements of our analysis. We will, for example, consider the need for filtered vents for Mark I and Mark II containments. We will also consider the loss of ultimate heat sink in our agenda as well as review the pre-staging of potassium iodide beyond the 10-mile emergency planning zone.

Fukushima provided some important insights regarding all of these issues, and we can use that knowledge to enhance our assurance of safety in the United States. We have also received valuable support from the Advisory Committee on Reactor Safeguards. ACRS's review of the Task Force report and the 21-day paper has highlighted several areas of concern on which we must focus. For example, ACRS highlighted the need to place high priority on new rulemaking to strengthen station blackout requirements. The ACRS's continued strong involvement in this ongoing effort must be a hallmark of our response to Fukushima.

The Commission has directed the staff to strive to complete and implement all lessons learned from Fukushima within 5 years. However, I believe that we must also approach this overall effort in a manner that recognizes some aspects of our response, such as

station blackout, have more safety import than others and should therefore be completed as quickly as possible.

In the particular case of station blackout, Commissioner Ostendorff has provided a leading voice on the Commission to assure that this rulemaking is completed within 30 months.

I believe we have met the challenge this Committee has laid before us and have made tremendous progress in a short period of time. That said, I also believe that we must assure that our focus on the lessons of Fukushima do not distract from the existing regulatory work that may have equal or greater safety benefit than some of the elements of our Fukushima response. It is vital that we prioritize our overall portfolio of work and assure that we place our resources on those tasks that provide the greatest safety benefit.

Thank you for your attention, and I look forward to answering your questions.

[The responses of Mr. Magwood to questions for the record follow:]

Questions from Senator Barbara Boxer

Question 1

The press has reported that you have stated that your work in the nuclear industry has had no influence on your service at the NRC, including a quote of you saying "I haven't talked to Mr. [Alex] Flint in probably three or four years."

- a. Provide a list of all meetings that you or your staff have taken part in . . . involving a former client of yours, an individual who is employed by a former client of yours, or an individual who is employed by a business that is associated with a former client of yours, or with Mr. Flint.**

Please see attached table. Among those organizations listed, I have included Mitsubishi Nuclear Energy Systems, with which I worked in this company's capacity as the industrial partner for Japan's advanced liquid metal reactor program.

Regarding Mr. Flint, I have not had occasion to meet with him since the end of my tenure at the Department of Energy, during which he was a staff member with the Senate Energy & Water Appropriations Subcommittee.

- b. For each such meeting that you or your staff have taken part in, provide the date of the meeting, the first and last names of the individuals involved in the meeting, who the individuals represented at the meeting, the topic of the meeting, the issues discussed during the meeting, and any decision or commitment that you or your staff have made related to the discussion.**

Please see attached table. However, please note that consistent with the ethics pledge required of all of President Obama's appointees, I am prohibited from engaging in any particular, substantive decisions regarding my former clients. When possible, I include my legal advisor in meetings with industry to assure the strict adherence to all ethics requirements. As such, my meetings and interactions with former clients have been for the purpose of exchanging information, and have not resulted in any policy or regulatory decisions or commitments.

- c. Provide all documents...that you have related to such meeting and any decision or commitment that you or your staff have made related to the meeting.**

The relevant documents are attached. Please note, however, that because these meetings were not related to any specific policy or regulatory decision

many of them were informal in nature. As a result, my office files do not include documents related to every meeting.

d. Have you ever met with an individual who is a former client of yours, a representative of a former client of yours, an individual who is employed by a business that is associated with a former client of yours outside of the NRC building?

i. If you have been involved in any such meeting, have you noted each such meeting on your calendar?

In keeping with a commitment I made to Chairman Boxer during my confirmation hearing, I voluntarily maintain my calendar on the NRC's public website in order to provide the public with an extra measure of transparency. As I note on the calendar, I publish all meetings and visits with external stakeholders such as utilities and non-governmental organizations. However I do not publicly post meetings with domestic or international governmental entities. Therefore, meetings I have had with Japan Atomic Energy Agency (JAEA), a research organization within the Japanese government for which I was an advisor in the area of liquid metal reactor research and development, are not generally noted on my public calendar. Other than JAEA, my public calendar provides a complete account of my meetings with former clients.

ii. Have you ever failed to note such a meeting on your calendar?

Please see the response to Question 1.d.i. above.

iii. Provide a list of each such meeting that you have not noted on your calendar but that you have taken part in, provide the date of the meeting, the first and last names of the individuals involved in the meeting, the topic of the meeting, the issues discussed during the meeting, a summary of the meeting, and any decision or commitment that you have made related to the discussion.

This information is provided in response to question 1.b. above.

iv. Provide all documents...that you have related to such meeting.

The relevant documents are attached.

Question 2

On October 19, 2011, the Commission approved a charter for the longer-term review of lessons learned from the Japanese earthquake and tsunami, and the Commission requested that the staff provide a status update every 6 months in the form of a paper. Will you agree to provide me with those update papers on the day that they are made available to the Commission?

The most recent six month update paper was provided to the Commission on February 17, 2012. After a brief review by the Commission to ensure that the paper was of the scope and quality expected and to ensure that the Commission was cognizant of all issues raised in the paper in anticipation of potential questions and inquiries, on the following business day, I approved release of the paper to the general public. The paper was actually released on, Wednesday February 22, 2012. The staff subsequently notified the Commission that there was an error in the paper. That error was corrected and the corrected version was released. I support the application of this approach for all future updates.

Question 3

In the August 2, 2011 hearing, I asked you whether you could move forward on the Task Force recommendations in 90 days, and four Commissioners said "yes" for some or all of the recommendations. However, the NRC had not taken actions on any of the recommendations as of our December 15, 2011 hearing.

- a. **Do you support conducting votes in public to increase public transparency and accountability?**

The Near Term Task Force report was transmitted to the Commission on July 12, 2011. In my vote on the Report – logged on July 19th – I advocated that within 20 days, the Executive Director of Operations should provide the Commission with a notation vote paper that identifies those Task Force recommendations that can, and in staff's judgment, should be implemented without further delay. The final SRM directed the staff to provide such a notation vote paper within 21 days of the SRM. I continue to believe that this approach enabled the agency to move forward in the swiftest practical fashion.

The staff paper regarding the Task Force recommendations was provided to the Commission on September 9th. I was the first member of the Commission to vote on this matter and logged a vote on September 14th to approve the staff's recommendations.

Regarding the voting process, I believe that our approach is highly transparent and open. I have found that the Commission and the agency as a whole is

committed to making decisions in as open a manner as possible, consistent with the need to maintain a decision-making process that allows a free exchange of ideas and fosters well-considered decisions. The Commission's notation voting process allows each Commissioner to consider input from the staff, the ACRS, and relevant stakeholders; to conduct discussions with other Commissioners; and, when necessary, to engage in independent research before coming to a conclusion on any voting matter.

In particular, the notation voting process allows Commissioners, if they choose, to provide draft votes to colleagues to facilitate a detailed exchange of ideas. In my personal experience, it is not unusual to find that my views on a particular matter are influenced by the insights of my colleagues on the Commission, each of whom bring unique experience to each subject.

When I have finalized my views on a given matter, my conclusions are then documented in writing, and can be, and often are, accompanied by a detailed written explanation of the reasoning behind my decision. After the entire Commission has voted, our votes form the basis for developing guidance to the staff, transmitted via a document known as a Staff Requirements Memorandum (SRM). Except in cases of papers related to sensitive information, the Commission's entire detailed voting record (including both the Commissioners' votes on the staff papers and documents related to development of the SRM) is released to the public. I believe that this process appropriately allows for public involvement, provides the Commissioners the necessary time to develop carefully considered, reasoned, and well-supported positions, and provides the public information about the voting process. That said, I am open to suggestions to improve transparency that do not impair the quality of the decisions we reach.

Our procedures do allow for public voting of what we term "red band" papers. However, as defined in our Internal Commission Procedures, use of this type of paper "indicates an issue that lends itself to *brief* discussion, deliberation, and possible vote at a Commission meeting." While I agree that these types of votes could be useful in some circumstances, because these voting sessions are intended to include only brief deliberation and discussion, they are not well-suited for the complex issues like those related to the post-Fukushima actions.

- a. Do you support making your vote on all matters related to the Task Force recommendations available to the public on the day you vote to further increase transparency and accountability?**

The Commission never publicly releases votes related to certain sensitive issues, such as security, and does not release votes related to the Commission's adjudicatory process. However, for votes that would eventually be released

under our normal procedures, such as those related to the Task Force recommendations, I have no objections to the early release of my votes.

Question 4

To what extent do you think the swift implementation of lessons learned from Fukushima is good for public support of, and confidence in the safety of, nuclear power?

I think it is essential. While it would certainly do more harm than good to public confidence were we to act precipitously and be obligated to make corrections in the following months and years, I believe that the public expects and deserves a swift, reasonable response from our agency. I have and continue to urge action that is consistent with moving forward in a deliberate, well-thought out manner to implement carefully considered safety improvements that reflect public stakeholder participation and ACRS review. For that reason, I am pleased that the staff has set a realistic schedule for implementation of the lessons learned from Fukushima.

Question from Senator Tom Carper

Question 1

During the December 15th hearing, I asked Chairman Greg Jaczko if the day-to-day NRC staff work was being compromised with the staff working on the Fukushima recommendations and the recent unrest between the Commissioners. Specifically, I asked about the licensing process for new reactors and the relicensing process for our current reactors. Chairman Greg Jaczko responded that there may be some delays in the relicensing process for our current reactors due to resource constraints.

Over the years, I have worked to ensure the NRC has the right amount of resources to do its job and ensure the Commission can protect public safety.

- a. Can you tell me how many staff were working on relicensing leading up to the Fukushima crisis and how many staff are working on relicensing today?**

At the time of the Fukushima Event of March 11, 2011, 82 staff members were working on relicensing. Currently 77 staff members are working on relicensing. Of the five staff member reduction, three of those were reassigned due to Fukushima support. There were also approximately 24 NRC staff members who were spending part of their time supporting license renewal reviews in March 2011. This number has remained steady over the last year.

- b. How many additional staff are needed to ensure there are not any delays?**

I am unable to provide an answer at this time. The Commission recently received from the staff the updated FY 12 Current Estimate Budget and Shortfall List. Deliberation and voting has not been completed. Once this process is complete, we may have sufficient information to respond to this question.

- c. In addition, I would like an update on all the relicense applications that are currently being reviewed by the NRC – including a timeline for each reactor from the day the application was docketed by the NRC to the estimated day the application is expected to be finalized.**

For a high-level summary of the current license renewal applications under review - detailed information on each application and the corresponding review schedule can be found on the following website:

<http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>

Questions from Senator James Inhofe

Question 1

In the hearing, it was alleged that at our last NRC hearing on August 2, four of you made a commitment to this committee that you would move forward on some or all of the Near-term Task Force recommendations within 90 days, but that you had failed to do so. Please explain whether you believe you have met that 90-day commitment.

Soon after receiving the Near-term Task Force report, the Commission asked staff to identify the most urgent actions that should be carried out in implementing the task force's recommendations. I was the first Commissioner to vote on this matter and logged my vote on September 9, 2011. I worked with my colleagues to complete negotiations on this matter as quickly as possible and final action on this matter was concluded on October 18, 2011. The Commission authorized the staff "to implement without delay the Near-Term Task Force recommendations" staff identified as high priority. Further the Commission ordered staff to "strive to complete and implement the lessons learned from the Fukushima accident within five year – by 2016."

In addition, as part of this vote, the Commission ordered staff to launch a new rulemaking to revise our Station Blackout (SBO) regulations and set a target to complete this work within 30 months.

While significant work continued through to the present time, I believe the Commission kept its commitment to the Committee with this October 18 guidance to the staff. Further, the Commission provided guidance on the balance of the Near-term Task Force recommendations on December 15, 2011.

Question 2

In the hearing you were criticized for stalling progress on post-Fukushima safety improvements by requesting a "re-review" of the Near-term Task Force 90-day report. Please describe the benefits of the broader staff review, the ACRS review, and stakeholder involvement that you would not have seen if the Commission had simply acted merely on the 90-day report.

The assessment of the Task Force recommendations by the broader staff was not a "re-review" of the task force recommendations. The process established by the Commission was designed to use the Task Force recommendations as a starting point and engage all stakeholders and the ACRS in an assessment of how best to move forward. This process was invaluable and has allowed the agency's planned response to reach today's highly-developed stage.

While expert, the Task Force consisted of a very small group of people working in a brief period of time. They had no opportunity or ability to recommend the highly specific actions that are now pending before the Commission.

In addition, not all issues were adequately covered by the Task Force. The Commission's chosen process allowed for the discussion of all hazards facing nuclear plants—not just seismic and flooding as highlighted by the Task Force—as well as many issues vital to safety such as the potential for loss of the ultimate heat sink and the need to review our current approach to the distribution of potassium iodide.

Had we not proceeded in the open, methodical manner advanced by a majority of the Commission, many safety issues would have been left unaddressed and the opportunity for meaningful stakeholder participation would have been lost.

Question 3

In Mr. William Daley's December 12, 2011, letter to you, he urged you to improve your internal communications. Is Mr. Daley's assessment a full and accurate depiction of the leadership dynamics at the Commission? If not, why not?

As public servants and the stewards of Federal resources, my fellow Commissioners and I felt a strong obligation to bring our serious concerns regarding the leadership and management of our agency to the White House. Having done so, 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 lead to our October 13 letter.

With respect to Mr. Daley's response, you note that he urged the Commission to improve its internal communications. While I agree that internal communication is an area of potential improvement, it is quite clear that the leadership issues we raised in our letter to the Chief of Staff go far beyond concerns about internal communications. In that respect, I believe Mr. Daley's response was broader than this one specific concern. 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.

Question 4

Please describe any limitations under the Sunshine Act that would limit or prohibit private meetings between all five commissioners and a third-party mediator.

Meetings between the five Commissioners and a third-party mediator could potentially be held in private. As discussed below, however, the Sunshine Act limits what could be discussed at such meetings.

Subject to certain enumerated exceptions, the Government in the Sunshine Act (5 U.S.C. § 552b) (Sunshine Act, or Act) prohibits a quorum of the Commission (*i.e.*, three or more Commissioners) from meeting in private to deliberate "where such deliberations determine or result in the joint conduct or disposition of joint agency business." See §§ 552b(a)(2), (b), (c), and (e). There are, however, certain types of discussions involving a quorum of NRC Commissioners that would not implicate the Sunshine Act at all, making it unnecessary to assess the applicability of Sunshine Act exemptions or adhere to the Act's various procedural requirements for closed meetings. Such discussions are sometimes referred to as "non-Sunshine Act discussions." The Supreme Court confirmed the permissibility of such discussions in *FCC v. ITT World Communications, Inc.*, 466 U.S. 463, 471 (1984), by recognizing that Congress had carefully crafted the Sunshine Act's "meeting" definition in § 552b(a)(2) to exclude certain types of discussions from the Sunshine Act's reach. Under the Sunshine Act, if a discussion does not qualify as a "meeting" under the Act's definition, the Act's restrictions and procedures do not apply.

In line with the *ITT World* decision, NRC's Sunshine Act implementing regulations define "meeting" to encompass only "discussions [that] are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency." 10 C.F.R. § 9.101(c). In a *Federal Register* notice associated with this rule language, the NRC included "[h]ow well is the agency functioning" as an example of a potential non-Sunshine Act discussion topic, at least where the discussion stays at a "generalized 'big picture'" level. *Government in the Sunshine Act Regulations: Final Rule*, 64 Fed. Reg. 24,941 (May 10, 1999). The Commission's Internal Commission Procedures, available online at <http://www.nrc.gov/about-nrc/policy-making/internal.htm>, further describe non-Sunshine Act discussions as "preliminary, informal, informational, or 'big picture.'" Internal Commission Procedures at IV-9.

Accordingly, a discussion between the five Commissioners and a mediator could presumably qualify as a non-Sunshine Act discussion, and thus be held in private, so long as the discussion focuses solely, and in a relatively generalized way, on the Commission's functioning as a collegial body and does not attempt to work towards resolution of specific items of business that are pending, or expected to be pending,

before the agency. Under the Internal Commission Procedures, the General Counsel and the Secretary of the Commission are required to attend any non-Sunshine Act discussions, but the Commission may waive this provision by majority vote. Internal Commission Procedures at IV-9.

To the extent that a meeting between the five Commissioners and a mediator might benefit from getting into the specifics of pending or expected NRC business, the meeting—or, at least, the portions of the meeting that address these items of business—would likely need to fit within one or more of the ten Sunshine Act exemptions listed in § 552b(c) in order to be closed to the public. This would in general be a fact-specific, case-by-case determination based on the particular nature of the anticipated discussions. See § 552(d)(1). Closure of meetings pursuant to Sunshine Act exemptions requires satisfaction of certain procedural requirements specified in the Act. These include requirements that a majority of the Commission vote in favor of closure, that advance notice be given to the public, that the NRC General Counsel certify that the meeting may be properly closed, and that records of the discussion be created and maintained. See §§ 552b(d), (e), and (f).

All that said, I should clarify that I do not believe that the behavioral and leadership issues we raised in our October 13 letter and in subsequent Congressional testimony are matters that can be remediated through a mediation process. Such a process might assist with communications issues or interpretations of law and procedure, but I feel the Commission is able to discuss these issues internally. Unfortunately, such concerns are trivial in contrast to the issues we highlighted in our letter and in testimony.

Question 5

During the December 15 hearing, a number of alleged incidents of harassment, intimidation, bullying, and retaliation were discussed. Did you discuss these matters with Mr. Daly? Please list those that you did discuss.

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. However, I think it is fair to say that the comments I provided to the Committee at the December 15 hearing were substantially similar to the input I provided the White House staff.

Question 6

Please explain why a chilled work environment is detrimental to nuclear safety.

It is an essential element of a successful nuclear safety culture that all personnel feel they have the ability to raise issues, voice concerns, and ask questions without fear of reprisal. As a nuclear regulator, NRC would be very concerned should a licensee exhibit

behavior or practices that inhibited the ability of its staff to speak freely about issues of safety importance. Trained, experienced individuals are the first and last line of defense in assuring the safety of all nuclear operations. If they are prevented from speaking freely when they have concerns or questions, safety is compromised.

In the same manner, we at the NRC encourage all of our staff and managers to maintain an open collaborative work environment. Such an environment encourages collaborative problem solving and decision-making by placing value on diverse views, alternative approaches, critical thinking, unbiased evaluations, and honest feedback on how decisions are made. This type of approach enhances safety because, even when alternative views are not adopted, considering all perspectives enhances a regulator's ability to make the best safety-related decisions possible.

In contrast, a chilled work environment is one in which individuals are uncomfortable bringing up minority or opposing viewpoints. This robs decision-makers of information that may be crucial to developing a carefully considered, nuanced position that is fully protective of public health and safety. Moreover, in a chilled work environment, individuals may be reluctant not only to share differing opinions but also to identify factual or technical errors. This could have a disastrous impact on public health and safety.

Question 7

Please explain why it is critical for Commissioners to receive the best professional opinions from agency staff, unfiltered and unrestrained.

The Commission discharges the agency's rulemaking, adjudicatory, and policy-formulation functions. The Commission structure was designed to take into account the diverse viewpoints of all Commissioners and to, through the voting process and consensus building, reach the best conclusions possible. However, the benefits of varied Commission viewpoints are significantly dimmed if those viewpoints are not based on the best available information.

While Commissioners can, of course, base their opinions on their own experience and research and meetings and interactions with outside stakeholders such as other governmental entities, industry representatives, and non-governmental organizations, the NRC's greatest asset is its well-qualified, experienced staff of experts. These experts should be relied upon to give unbiased, technically- and factually-sound counsel, advice, and recommendations reflecting what they believe to be the best course of action. They should, when advising the Commission, feel free to disagree with or contradict any Commissioner or Commissioners, if they feel that doing so is necessary to provide the best counsel.

If they are unable to provide their honest advice to the Commission or if their views are altered or filtered to promote one agenda or other, then the decisions made by the Commission are not as well-informed as they might be otherwise and public safety could be compromised.

Question 8

Please describe all situations where you are concerned that information was withheld from the Commission, delayed, or altered prior to transmittal to the Commission. Please describe any actions inconsistent with Internal Commission Procedures.

I would like to provide a full account in response to this question, but it would be impracticable to do so. In the last year, it has become more or less routine for staff information to be altered, delayed, or blocked from the Commission. For example, just within the last few weeks, staff was instructed to withhold information about the Commission's own internal finances.

However, I can point to a few salient instances that raised concerns that vital information related to important policy matters was withheld from the Commission or was delayed or altered prior to transmittal to the Commission. 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. This action was not consistent with the Commission's procedures.

Perhaps even more troubling, we later discovered that earlier versions of the original staff 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 its 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, while transitioning from the near-term to longer-term review by July 15, 2011. That earlier version went on to say the staff intended 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.

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 notable example is related to the policy issue associated with fire protection at nuclear power plants. In late 2010, 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 proving to be unworkable and staff was developing a notation vote 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. However, just before this 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.

Question 9

When did you first learn of Chairman Jaczko's prospective proposal to cut resources to license renewals?

- a. **Did he discuss these with you prior to the December 6 press briefing and/or the December 15 hearing?**
- b. **Since the December 15 hearing has he provided you with any information on this matter?**

I have received no information from the Chairman about cutting resources for license renewals. The Commission's established policy is to continue review of all license renewal applications. To the degree that that policy direction has been altered, the Commission has not been notified or consulted.

Question 10

Please summarize all actions taken to re-evaluate the safety and security of nuclear plants in the United States, and to implement the recommendations of the Near-term Task Force's 90-day report. Please include a timetable of all relevant implementation dates for projected actions and those already taken.

Consistent with the NRC mission of ensuring the protection of public health and safety, the NRC is taking action as a result of the events at the Fukushima Daiichi nuclear power plant. In April 2011, the Commission established a senior-level task force known as the Near-Term Task Force (NTTF) to conduct both a short- and long-term analysis of potential lessons-learned. The report produced by the NTTF, SECY-11-0093, "Near Term Report and Recommendations for Agency Actions following the Events in Japan," dated July 12, 2011 (Agency wide Documents Access and Management System (ADAMS) Accession No. ML11186A950); identified twelve major recommendations with the potential to improve the safety of U.S. nuclear facilities

The NTTF recommendations serve as the foundation of the agencies actions. The NRC staff sought external stakeholder feedback in a public meeting on August 31, 2011, regarding the NTTF recommendations that stakeholders consider to be most important and that the NRC should undertake in the near-term. These recommendations were identified in a notation vote paper (SECY-11-0124, "Recommended Actions to be taken Without Delay from the Near-Term Task Force Report") dated September 9, 2011. A Commission meeting was conducted on September 14, 2011, during which representatives from other Federal and state agencies, the nuclear industry, and interested non-governmental organizations provided their views on the NRC staff's proposed near-term actions.

The Advisory Committee on Reactor Safeguards (ACRS) provided their views on the NTTF recommendations on October 13, 2011. Their views were quite comprehensive including:

- Expand NTTF Recommendation 2.1 to include an update of the guidance for external flooding
- Expand Recommendation 2.3 to assure the walkdowns address severe storms as well as seismic and flooding events
- Expand Recommendation 4.1 to include issuance of an advanced notice of proposed rulemaking and requiring licensees to provide an assessment of capabilities to cope with an extended station blackout (SBO)
- Apply actions related to Recommendation 5.1 to BWR plants with Mark II Containments

- Consider Performance Based Criteria to mitigate and manage an extended SBO as an alternative to specific coping times
- Expand Recommendation 6 to include a requirement for BWR plants with Mark I and Mark II containments to implement combustible gas control measures in reactor buildings; additionally expand Recommendation 6 to include an assessment of the vulnerabilities introduced by shared ventilation systems.

Many of the recommendations from the ACRS were included in the Commission's direction to the staff.

On October 18th, the Commission responded to the staff's recommendations with Staff Requirements Memorandum (SRM) SECY-11-0124, "Recommended Actions to be taken Without Delay from the Near Term Task Force Report" (ADAMS Accession No. ML112911571) to initiate action without delay on those NTTF recommendations with the greatest potential for safety improvement in the near-term. In that SRM, the Commission directed that the NRC should strive to complete and implement the lessons-learned from the Fukushima Daiichi accident within 5 years (by 2016). In addition, the Commission directed that the staff should designate the station blackout (SBO) rulemaking as a high-priority rulemaking with a goal of completion within 24 to 30 months.

The staff implemented the Commission direction outlined in SRM- SECY-11-0124 and focused on those NTTF recommendations with the greatest potential for safety improvement. In order to do this effectively, the staff performed an assessment of each NTTF recommendation to determine the required regulatory activities, an estimated schedule, and associated resource impacts. Once this information was developed, the staff prioritized the NTTF recommendations (and other actions that emerged from stakeholder and ACRS engagement) into three tiers based on safety importance, the availability of resources to complete the work, and the completeness of relevant technical information. Our efforts have since focused on the items of highest safety significance, collected under the "Tier 1" banner.

To further inform the prioritization of the NTTF recommendations, the NRC staff conducted a public meeting with representatives of our licensees on September 21, 2011, in order to better understand industry's current plans and actions to address the lessons-learned from the Fukushima Daiichi event. The NRC staff's proposed prioritization of all of the NTTF recommendations was submitted in a notation vote paper (SECY-11-0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned") dated October 3, 2011 (ADAMS Accession No. ML11272A111). A Commission meeting was conducted on October 11, 2011, during which representatives from other Federal and state agencies, the nuclear industry, and

interested non-governmental organizations provided their views on the NRC staff's proposed prioritization.

Again the ACRS provided their views on the staff's proposed prioritization in a letter dated November 8, 2011. The ACRS advised the Commission that the staff's three tier approach and criteria for prioritization of the Near Term Task Force recommendations were appropriate. The ACRS provided various additional recommendations including:

- Rulemaking activities related to strengthening of Station Black Out mitigation capability should be expedited.
- Tier 1 recommendations should be expanded to include NTTF recommendations 1.a through 1.g and 2.a through 2.d from the ACRS's October 13th report.
- Recommendation 10.2 regarding evaluation of the command and control structure and qualifications of decision makers should be initiated in parallel with Tier 1 activities related to integration of onsite emergency actions.
- Tier 2 recommendations should be expanded to include the additional actions regarding enhancement of selected reactor and containment instrumentation and the need to proactively engage in efforts to capture and analyze data from the Fukushima event.
- Recommendation 7.1-2 – Develop and issue orders to licensees to provide reliable Spent Fuel Pool instrumentation should be reconsidered.
- Schedules for SFP instrumentation improvements and other modifications to SFPs should be informed by quantification of the contribution made by SFPs to overall plant risk.

SECY-11-0137 was reviewed by the Commission and in a December 15, 2011, SRM for SECY-11-0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned," (ADAMS Accession No. ML113490055) the Commission approved the staff's recommended prioritization, subject to direction provided in SRM-SECY-11-0124. The Commission also provided the following guidance in SRM-SECY-11-0137:

- Consult with the Commission via notation vote papers before issuing any orders that would lead to a change in the design basis of licensed plants.
- Inform the Commission 5 business days before issuing letters under 10 CFR § 50.54(f) associated with the regulatory activities outlined in SECY-11-0137.
- Inform the Commission of the results of its review of six additional staff recommendations, that went beyond those prepared by the NTTF but which the staff determined had a clear nexus to the Fukushima Daiichi event and may warrant additional action. This includes the results of the staff's consideration of filtration of containment vents in the context of the existing Tier 1 issues on hardened reliable vents for boiling water reactor (BWR) Mark I and Mark II containments.
- Inform the Commission of how the staff addressed Advisory Committee on Reactor Safeguards ACRS recommendations, dated November 8, 2011 (ADAMS Accession No. ML11311A264).
- Initiate a probabilistic risk assessment (PRA) methodology to evaluate potential enhancements to the capability to prevent or mitigate seismically induced fires and floods as part of Tier 1 activities described in SECY-11-0137.

Most recently, in response to the recent legislation (the December 2011 Consolidated Appropriations Act, 2012 (Public Law (PL) 112-74)) and input it received from stakeholders, the staff has proposed an acceleration of the schedule originally proposed in SECY-11-0137, with a goal of issuing the Tier 1 orders and a request for information letter before the first anniversary of the Great Tōhoku Earthquake. As such, the staff provided to the Commission a notation vote paper (SECY-12-0025, "Proposed Orders and Requests for Information in Response to Lessons-Learned from Japan's March 11, 2011, Great Tōhoku Earthquake and Tsunami") (ADAMS Accession No. ML12039A103) dated February 17, 2012, to address requirements stated in SRM-SECY-11-0137, and to communicate the staff's proposed orders and request for information. SECY-12-0025 is currently under review by the Commission.

As reflected in SECY 12-0025, the staff has completed significant work (thanks in great part to the comprehensive stakeholder engagement ordered by the Commission) and proposed a schedule of implementation as follows:

Proposed Schedule for Implementation of NRC Orders

Milestone	Operating Reactors	Combined License Holders	Construction Permit Holders
Guidance Issued	August 31, 2012	August 31, 2012	August 31, 2012
1 st Update	October 31, 2012	October 31, 2012	October 31, 2012
Plan Submitted	February 28, 2013	August 31, 2013	August 31, 2013
Periodic Updates	Every six months	Every six months	Every six months
Latest Completion	December 31, 2016	Prior to initial fuel load	Prior to receipt of operating license

Proposed Schedule for 50.54(f) Letter on Seismic and Flooding Reevaluations

Milestone	Operating Reactors and Construction Permit Holders
Guidance Issued	November 30, 2012
Initial Response	January 30, 2013
Licensee Seismic Hazard Evaluations Due	September 9, 2013 (Central and Eastern United States/ March 9, 2015 (Western United States)
Licensee Flooding Hazard Evaluations Due	Between March 9, 2013 and March 9, 2015 (based on prioritization)
Future Steps	Pending NRC evaluation and prioritization, with completion of evaluations for all facilities between October 2016 and April 2019

Proposed Schedule for 50.54(f) Letter on Seismic and Flooding Walkdowns

Milestone	Operating Reactors
Guidance Issued/Endorsed	May 2012
Licensees Identify Walkdown Procedures to be Used	June 9, 2012 (flooding)/July 9, 2012 (seismic)
Licensees Provide Results of Walkdowns	180 days after NRC endorsement of the walkdown procedure (November 2012)

Proposed Schedule for 50.54(f) Letter on Enhanced Emergency Preparedness Staffing and Communications (covering multiunit events)

Milestone	Operating Reactors, Combined License Holders, and Construction Permit Holders
Guidance Issued/Endorsed	August 31, 2012
Licensee Responses	June 9, 2012 thru October 31, 2012 (various elements)

Date	Organization	NRC Participants	Non-NRC Participants	Topics/Issues Discussed	Location of Meeting
May 12, 2010	Mitsubishi Nuclear Energy Systems	William D. Magwood, IV; Margaret J. Bupp, Legal Counsel	Kiyoshi Yamauchi, MNES; Keith Paulson, MNES	General Courtesy Visit	NRC Headquarters
September 8, 2010	Federation of Electric Power Companies of Japan	William D. Magwood, IV; Margaret J. Bupp	Ichiro Maeda, FEPC; Toshiya Takaki, FEPC; Kazuhiko Kusakari, FEPC; Yoshihiro Tomioka, FEPC; Shigeru Kimura, FEPC	Comparison of regulatory structure in United States and Japan; comparison of nuclear energy development in United State and Japan	Tokyo, Japan
September 9-10, 2010	Japan Atomic Energy Agency	William D. Magwood, IV; Margaret J. Bupp	Please see list of participants below ¹	Attendance at Third International Consultants' Meeting, Sponsored by Japan Atomic Energy Agency (Theme: International Harmonization of Safety Aspects of Sodium Fast Reactors Toward Global Deployment)	Tokyo, Japan

¹ International Consultants (Presenting Participants): Jacques Bouchard, Commissariat a l'energie atomique (France); Yoichi Fuji-ie, Tokyo Institute of Technology (Japan); Chang Sun Kang, Seoul University (Korea); Baldev Raj, Indira Gandhi Center for Atomic Research (India); Mi Xu, China Institute of Atomic Energy (China). Experts from Japan: Hiroshi Endo, Japan Nuclear Energy Safety Organization; Yoshio Kani, Tokai Univeristy; Koji Morita, Kyushu University; Hirotake Moriyama, Kyoto University; Masaki Saito, Tokyo Institute of Technology; Akira Yamaguchi, Osaka University; Shigenobu Kubo, Mitsubishi FBR Systems. Participants from JAEA: Shigeo Nomura, Satoru Kondo, Yutaka Sagayama, Kazumi Aoto, Masakazu Ichimiya, Masaki Morishita, Shoji Kotake, Mr. Mizuno, Mr. Ieda, Ryodai Nakai, Ikken Sato, Hiroki Hayafune, Tsutomu Okubo, Yoshiharu Tobita, Takaaki Sakai, Toru Suzuki, Yasushi Okano, Satoshi Fujita, Hidemasa Yamano, Shin Kikuchi. Other Participants: Yeong Il Kim, KAERI; Takuya Kitabata, JAEA. Secretariat (all JAEA): Takashi Namba, Koji Sato, Shinichi Toyama, Shigeaki Yonezawa, Yuka Usui, Satoko Kurihara.

October 1, 2010	Mitsubishi Electric Power Products (Not a former client, but associated with MNES)	William D. Magwood, IV; Patrice M. Bubar, Chief of Staff	Gil Remely, Mitsubishi Power Products, Inc.; Kenji Mashio, MNES; Tim Clouser, Luminant	Tour of Mitsubishi Electric Power Products APWR Simulator	Warrendale, PA
March 23, 2011	Federation of Electric Power Companies of Japan	William D. Magwood, IV	Tai Inada, FEPC	Potential effects of Fukushima accident on nuclear industry in Japan and worldwide	Washington, DC
March 30, 2011	Marubeni Group	William D. Magwood, IV; Margaret J. Bupp	Richard Straebel, Marubeni; Shuichi Ohashi, Marubeni; Fumiya Kokubu, Marubeni; Takashi Imamura, Marubeni; Wataru Ikushima, Marubeni; Shinichiro Uemiyu, Marubeni	Potential effects of Fukushima accident on nuclear industry in Japan and worldwide	NRC Headquarters
June 22, 2011	Mitsubishi Nuclear Energy Systems	William D. Magwood, IV; Margaret J. Bupp	Frank P. Gillespie, MNES; Kiyoshi Yamauchi, MNES; Yoshiki Ogata, MNES	USAPWR	NRC Headquarters
August 24, 2011	Federation of Electric Power Companies of Japan	William D. Magwood, IV	Tia Inada, FEPC	Impact of Fukushima on Japanese Nuclear Industry	Rockville, MD
January 18, 2012	Federation of Electric Power Companies of Japan	William D. Magwood, IV; Patrice M. Bubar; Kirk Foggie, Office of International Programs	Yasuyuki Fushimi, FEPC; Yoshihiro Tomioka, FEPC; Shigeru Kimura, FEPC	Discussion of steps needed to improve safety oversight of Japanese nuclear plants	Tokyo, Japan

January 19, 2012	TEPCO	William D. Magwood, IV; Patrice M. Bubar, Commissioner William C. Ostendorff; Ho K. Nieh, Chief of Staff to Commissioner Ostendorff	Various Officials and Staff	Visit to Fukushima Daiichi Nuclear Power Plant	Fukushima, Japan
February 8, 2012	Federation of Electric Power Companies of Japan	William D. Magwood, IV	Takeshi Fujii, FEPC	Impact of Fukushima on Japanese Nuclear Industry	Rockville, MD

Senator BOXER. Thank you.
Ms. Svinicki.

**STATEMENT OF HON. KRISTINE L. SVINICKI,
COMMISSIONER, U.S. NUCLEAR REGULATORY COMMISSION**

Ms. SVINICKI. Thank you, Chairman Boxer, Ranking Member Inhofe, and members of the Committee, for the opportunity to appear you today on the topic of the review of the NRC's Fukushima response activities.

I join Chairman Jaczko in thanking the NRC staff for their tireless work and unflagging efforts. As he has described, the Near-Term Task Force 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 and further scrutiny of emergency preparedness activities.

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. The Task Force's recommendations have now undergone review by the NRC staff and the Advisory Committee on Reactor Safeguards. The agency's broad set of stakeholders have also been engaged through 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 and plans to continue to do so during the coming year. I believe that all of these efforts have strengthened the NRC's activities in response to the Fukushima events.

Additionally, as the NRC acquires more information about the accident, we will assess the impact of such information on actions already underway and determine whether additional actions are needed. The Institute of Nuclear Power Operations has released a special report on the nuclear accident at the Fukushima plant which provides a detailed time line of events after the earthquake and tsunami in Japan. The Commissions' longer-term review activities will evaluate emergent information such as this report as it becomes available, identify any additional recommended actions and assess, any impacts on actions underway.

In addition to commending the NRC staff for their hard work, I would also like to acknowledge the extraordinary efforts of the Advisory Committee on Reactor Safeguards in having responded quickly to the Commission's request and all of the agency stakeholders who have participated in our public meetings to date. I believe their sustained involvement will further strengthen our activities as we move ahead.

Thank you, Madam Chair.

[The responses of Ms. Svinicki to questions for the record follow:]

**Environment and Public Works Committee Hearing
December 15, 2011
Follow-Up Questions for Written Submission**

Questions for Svinicki

Questions from:

Senator Barbara Boxer

- 1) *On October 19, 2011, the Commission approved a charter for the longer-term review of lessons learned from the Japanese earthquake and tsunami, and the Commission requested that the staff provide a status update every 6 months in the form of a paper. Will you agree to provide me with those update papers on the day that they are made available to the Commission?*

Yes. I will support Commission direction to the NRC staff that these update papers should be provided to the Committee on the day that they are provided to the Commission.

- 2) *In the August 2, 2011 hearing, I asked you whether you could move forward on the Task Force recommendations in 90 days, and four Commissioners said "yes" for some or all of the recommendations. However, the NRC had not taken actions on any of the recommendations as of our December 15, 2011 hearing.*

- a) *Do you support conducting votes in public to increase public transparency and accountability?*

I support the Commission's notation voting process. Under this process, the Office of the Secretary of the Commission publicly releases Commissioner votes on policy matters (posting them on the NRC's public website) after Commission action on a voting paper has concluded. Also posted on the website is the direction to NRC staff resulting from the voting process, called a "Staff Requirements Memorandum." Together, these documents provide the individual view of each Commissioner (the vote) and the collective, majority outcome of the deliberative process (the resulting direction to the NRC staff).

- b) *Do you support making your vote on all matters related to the Task Force recommendations available to the public on the day you vote to further increase transparency and accountability?*

Regarding my vote on notation voting paper SECY-12-0025, "Proposed Orders and Request for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami," I released my vote to the public on March 2, 2012, the same day it was cast. I assess the merits of early release of my votes on a case by case basis. In general, votes on policy papers are made public on the agency's website concurrent with the conclusion of the voting process and issuance of the staff requirements memorandum resulting from the vote.

Enclosure

- 3) *To what extent do you think the swift implementation of the lessons learned from Fukushima is good for public support of, and confidence in the safety of, nuclear power?*

The swiftness of the NRC's implementation of the lessons learned from Fukushima is but one factor that weighs on the public's confidence in the NRC as a nuclear safety regulator. In addition, the process that the NRC follows in developing and acting on these lessons learned must be scrutable, thorough, and disciplined. If the public assesses that the NRC's process contains these elements, it is likely that public confidence will be reinforced.

Senator Tom Carper

- 1) *During the December 15th hearing, I asked Chairman Greg Jaczko if the day-to-day NRC staff work was being compromised with the staff working on the Fukushima recommendations and the recent unrest between the Commissioners. Specifically, I asked about the licensing process for new reactors and the relicensing process for our current reactors. Chairman Greg Jaczko responded that there may be some delays in the relicensing process for our current reactors due to resource constraints.*

Over the years, I have worked to ensure the NRC has the right amount of resources to do its job and ensure the Commission can protect public safety. Can you tell me how many staff are working on relicensing leading up to the Fukushima crisis and how many staff are working on relicensing today? How many additional staff are needed to ensure there are not any delays?

In addition, I would like an update on all the relicense applications that are currently being reviewed by the NRC – including a timeline for each reactor from the day the application was docketed by the NRC to the estimated day the application is expected to be finalized.

The following information was provided to each member of the Commission by the NRC staff, in response to your inquiry. Although I have no independent estimate of the resources committed or required, the staff reports that, at the time of the Fukushima Event of March 11, 2011, 82 staff members were working on license renewal reviews. Currently, 77 staff members are working on license renewal reviews. Of the five staff member reduction, three of those were reassigned due to Fukushima support. There were also approximately 24 NRC staff members who were spending part of their time supporting license renewal reviews in March 2011. This number has remained steady over the last year.

Currently, no additional staff is necessary to ensure there are not any license renewal delays due to Fukushima impacts. The staff is working to minimize any schedule changes on license renewal reviews due to supporting Fukushima lessons learned activities. Additionally, the license renewal process provides for "timely renewal," which allows a plant that has submitted a renewal application – and has made a good-faith-effort to complete the process – to continue to operate while the staff completes the review.

See the following table for a high-level summary of the current license renewal applications under review. Detailed information on each application and the corresponding review schedule can be found on the following website:
<http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>

<u>Plant</u>	<u>Application Date</u>	<u>Scheduled SER Date (actual dates in bold)</u>	<u>Scheduled FSEIS Date (actual dates in bold)</u>	<u>Expected Completion Date</u>
Pilgrim	1/27/06	6/28/07	7/27/07	In Hearing Process – Completion Date Unknown
Indian Point Units 2 & 3	4/30/07	8/11/09	12/03/10	In Hearing Process – Completion Date Unknown
Crystal River	12/18/08	TBD	TBD	TBD pending submittal of a repair plan to address containment concrete degradation
Diablo Canyon Units 1 & 2	11/24/09	6/2/11 To be supplemented as necessary	TBD	On hold pending submittal of updated seismic analysis
Columbia	1/20/10	2/12	4/12	6/12
Seabrook	6/1/10	TBD	TBD	TBD pending submittal of acceptable responses on concrete degradation
Davis-Besse	8/30/10	10/12	TBD	TBD pending submittal of updated analysis supporting environmental review
South Texas Project Units 1 & 2	10/28/10	10/12	10/12	2/13
Limerick Units 1 & 2	6/22/11	1/13	2/13	4/13
Grand Gulf	11/01/11	4/13	7/13	9/13
Callaway	12/19/11	TBD	TBD	TBD

Senator James Inhofe

- 1) *In the hearing, it was alleged that at our last NRC hearing on August 2, four of you made a commitment to this committee that you would move forward on some or all of the Near-term Task Force recommendations within 90 days, but that you had failed to do so. Please explain what you had done prior to November 2 and what you have done since, and whether you believe you have met that 90-day commitment.*

The Commission met its 90-day commitment to move forward on some or all of the Near-Term Task Force (NTTF) recommendations. Specifically, on October 18, 2011, the Commission directed the NRC staff to begin action without delay on those NTTF recommendations with the greatest potential for safety improvement in the near-term. This direction was provided in the Staff Requirements Memorandum (SRM) for SECY-11-0124, "Recommended Actions to be taken Without Delay from the Near Term Task Force Report." In that SRM, the Commission directed that the NRC should strive to complete and implement the lessons-learned from the Fukushima Dai-ichi accident within 5 years – by 2016. In addition, the Commission directed the staff to proceed with the station blackout rulemaking as a high-priority, with a goal of completion within 24-30 months.

Since November 2, 2011, the Commission has approved the staff's recommended prioritization of the recommendations, several of which could be implemented without undue delay. These particular recommendations pertain to the ability of plants to cope with seismic, flooding, and other externally initiated events, mitigating strategies for beyond design basis events, the installation of reliable hardened containment vents for boiling water reactors of similar vintage and design as the Fukushima reactors, additional instrumentation for spent fuel pools, and enhanced staffing and communications capabilities for emergency preparedness. The NRC has begun implementing many of these recommendations to enhance U.S. nuclear plant safety. On February 17, 2012, the NRC staff submitted for Commission consideration a set of orders and requests for information directed at the NRC's nuclear power plant licensees. As of March 5, 2012, the Commission is completing its review of this paper.

- 2) *In the hearing you were criticized for stalling progress on post-Fukushima safety improvements by requesting a "re-review" the Near-term Task Force 90-day report. Please describe the benefits of the broader staff review, the ACRS review, and stakeholder involvement that you would not have seen if the Commission and simply acted merely on the 90-day report.*

The broader staff review, the Advisory Committee on Reactor Safeguards (ACRS) review, and the stakeholder involvement have strengthened the Commission's deliberations by providing valuable input and perspectives on the NTTF recommendations, and identifying other issues. In the Staff Requirements Memorandum for SECY-11-0093, "Near-Term Report and Recommendations for Agency Actions Following the Events in Japan," issued on August 19, 2011, the Commission directed the staff to engage promptly with stakeholders to review and assess the recommendations of the Near-Term Task Force in a comprehensive and holistic manner for the purpose of providing the Commission with fully-informed options and recommendations. The staff was instructed to remain open to strategies and proposals presented by stakeholders, expert staff members, and others as it continues to examine information emerging from Japan since the conclusion of the NTTF review, and as it provides its recommendations to the Commission. The Commission also

directed that the ACRS formally review all Task Force recommendations and the staff's evaluation and recommended prioritization of the Task Force recommendations, and document its review in letter reports to the Commission.

This direction to the NRC staff initiated a series of interactions that continue to this day and will remain ongoing in the future as the agency and its stakeholders address lessons learned from the Fukushima accident. The Commission and staff have held numerous public meetings that have included stakeholder participation, and several comment letters also have been submitted to the NRC. The Commission and the staff have publicly engaged the ACRS, as well. These interactions have resulted in the identification of additional recommendations warranting further consideration and have provided valuable insights regarding how the agency should best proceed in addressing the recommendations. These insights have affected the staff's proposed scope and path forward on each recommendation. As a result, the agency is proceeding with greater efficiency and surety in implementing the recommendations than it would have without this input.

- 3) *In Mr. William Daley's December 12, 2011, letter to you, he urged you to improve your internal communications. Is Mr. Daley's assessment a full and accurate depiction of the leadership dynamics at the Commission? If not, why not?*

Respectfully, I disagree with elements of Mr. Daley's assessment of the dynamics at the Commission. 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 for decades, and that previous Commissions have functioned successfully under this structure. I also believe that the present tensions extend beyond differences on policy matters, because substantive disagreements on policy matters routinely exist in Commissions and Boards, as a nature of their structure. Instead, 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 his conduct toward his Commissioner colleagues and the NRC staff.

- 4) *Please describe any limitations under the Sunshine Act that would limit or prohibit private meetings between all five commissioners and a third-party mediator.*

The Government in the Sunshine Act precludes (with certain exceptions) non-public meetings of a quorum of the Commission where deliberations determine or result in the joint conduct or disposition of official agency business. A non-public meeting of all five Commissioners and a third-party mediator that ventured into deliberations resulting in the disposition of official agency business would be impermissible, unless otherwise excepted by law. NRC's Sunshine Act implementing regulations define "meeting" to encompass only "discussions [that] are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency." 10 C.F.R. § 9.101(c). Accordingly, a discussion between the five Commissioners and a mediator could presumably qualify as a non-Sunshine Act discussion, and thus be held in private, so long as the discussion focuses solely, and in a relatively generalized way, on the Commission's functioning as a collegial body and does not attempt to work towards resolution of specific items of business that are pending, or expected to be pending, before the agency.

- 5) *During the December 15 hearing, a number of alleged incidents of harassment, intimidation, bullying, and retaliation were discussed. Did you discuss these matters with Mr. Daley? Please list those that you did discuss.*

Mr. Daley's office promptly acknowledged receipt of the October 13, 2011 letter signed by four Commissioners and provided me with an opportunity for a meeting with Mr. Daley to discuss its contents. I appreciated these communications, which were confined to the matters outlined in the letter.

- 6) *Please explain why a chilled work environment is detrimental to nuclear safety.*

A chilled work environment at the NRC is detrimental to nuclear safety because it inhibits the NRC staff's willingness and ability to raise safety concerns to NRC management and to the Commission. Under Section 4(a) of Reorganization Plan No. 1 of 1980, any "officer or employee under the Commission may communicate directly to the Commission, or to any member of the Commission, whenever in the view of such officer or employee a critical problem or public health and safety or common defense and security is not being properly addressed." The legislative history of this provision states that "This subsection reinforces the NRC's open door policy with respect to bringing to Commission attention issues which affect the safety of nuclear reactors." S. Rep. 96-790 at 21.

- 7) *Please explain why it is critical for Commissioners to receive the best professional opinions from agency staff, unfiltered and unrestrained.*

It is imperative that the Commission receive the NRC staff's independent advice, and that recommendations purporting to represent the staff's positions are in fact so, because the Commission structure of governance is premised on the ability of each Commissioner to have full access to information pertaining to the Commission's functions. For example, the legislative history of Reorganization Plan No. 1 of 1980 states that "[i]ndividual members of the Commission shall also have full access to all information in order to assure that diverse views of the members are properly informed..." H.R. Rep. 96-1043, at 10. The legislative history also makes clear that "[d]irection of the EDO by the Chairman is not intended to prevent the EDO from independently preparing recommendations on matters which have been delegated to him" (S. Rep. 96-790 at 13); "information transmitted to the Chairman by the [EDO] relating to the Commission's functions will be given to the Commissioners immediately and without any alteration. The Chairman serves in this capacity only as a conduit for information to centralize the collection and forwarding of information to the Commission" (*Id.* at 20), and; the statutory framework for information sharing is not "to be used to justify a Chairman's decision to withhold information from, or delay giving information to, the Commissioners." (*Id.*)

- 8) *Please describe all situations where you are concerned that information was withheld from the Commission, delayed, or altered prior to transmittal to the Commission. Please describe any actions inconsistent with Internal Commission Procedures.*

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. Furthermore, the Internal Commission Procedures state that "[c]opies of draft and final SECY papers or COMSECYs delivered to the Chairman shall be delivered simultaneously to the other Commissioners." (Internal Commission Procedures at p. II-1, July 5, 2011).

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 that 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."

9) *When did you first learn of Chairman Jaczko's prospective proposal to cut resources to license renewals?*

a) *Did he discuss these with you prior to the December 6 press briefing and/or the December 15 hearing?*

No. I recall that I learned of his views in the trade press articles subsequent to his December 6 press briefing.

b) *Since the December 15 hearing has he provided you with any information on this matter?*

No, however, the NRC received its final Fiscal Year 2012 appropriations in December, 2011 and continues to evaluate any resulting impacts or adjustments to current year budget execution and/or Fiscal Year 2013 planning.

- 10) *Please summarize all actions taken to re-evaluate the safety and security of nuclear plants in the United States, and to implement the recommendations of the Near-term Task Force's 90-day report. Please include a timetable of all relevant implementation dates for projected actions and those already taken.*

The following information was compiled by NRC staff in response to your inquiry:

Consistent with the NRC mission of ensuring the protection of public health and safety, the NRC is taking action as a result of lessons-learned from the events at the Fukushima Dai-ichi nuclear power plant. In April 2011, the Commission established a senior-level team known as the Near-Term Task Force (NTTF) to conduct both a short- and long-term analysis of potential lessons-learned. The report produced by the NTTF, SECY-11-0093, "Near Term Report and Recommendations for Agency Actions following the Events in Japan," dated July 12, 2011, identified twelve broad recommendations with the potential to enhance the safety of U.S. nuclear facilities.

Consistent with Commission direction, the NRC staff is taking action on these NTTF recommendations. The NRC staff sought external stakeholder feedback in a public meeting on August 31, 2011, regarding the NTTF recommendations that stakeholders consider to be most important and that the NRC should undertake in the near-term. These recommendations were identified in a notation vote paper (SECY-11-0124, "Recommended Actions to be taken Without Delay from the Near-Term Task Force Report") dated September 9, 2011. A Commission meeting was conducted on September 14, 2011, during which representatives from other Federal and state agencies, the nuclear industry, and interested non-governmental organizations provided their views on the NRC staff's proposed near-term actions.

On October 18, 2011, the Commission directed the NRC staff to begin action without delay on those NTTF recommendations with the greatest potential for safety improvement in the near-term. The Commission directed that the NRC should strive to complete and implement the lessons-learned from the Fukushima Dai-ichi accident within 5 years – by 2016. In addition, the Commission directed that the staff should designate the station blackout rulemaking as a high-priority rulemaking, with a goal of completion within 24-30 months of the October 18, 2011 direction.

The staff is implementing the Commission direction and has begun taking actions on those NTTF recommendations with the greatest potential for safety improvement without delay. In order to do this effectively, the staff performed an assessment of each NTTF recommendation to determine the required regulatory activities, an estimated schedule, and associated resource impacts. Once this information was attained, the staff began to prioritize the NTTF recommendations into three tiers: Tier 1, Tier 2, and Tier 3. To further inform the prioritization of the NTTF recommendations, the NRC staff conducted a public meeting with representatives of the nuclear industry on September 21, 2011, in order to better understand their current plans and actions to address the lessons-learned from the Fukushima Dai-ichi event. The NRC staff's proposed prioritization of all of the NTTF recommendations was submitted in a notation vote paper (SECY-11-0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned") dated October 3, 2011. A Commission meeting was conducted on October 11, 2011, during which representatives from other Federal and state agencies, the nuclear industry, and interested non-governmental organizations provided their views on the NRC staff's proposed prioritization.

SECY-11-0137 was reviewed by the Commission and, in a December 15, 2011 SRM for SECY-11-0137, the Commission approved the staff's recommended prioritization. The Commission also listed the following staff requirements:

1. Consult with the Commission via notation vote papers before issuing any orders that would lead to a change in the design basis of licensed plants.
2. Inform the Commission 5 business days before issuing letters under 10 CFR § 50.54(f) associated with the regulatory activities outlined in SECY-11-0137.
3. Inform the Commission of the results of its review of six additional staff recommendations, that went beyond those prepared by the NTTF, but which the staff determined had a clear nexus to the Fukushima Dai-ichi event and may warrant additional action. This includes the results of the staff's consideration of filtration of containment vents in the context of the existing Tier 1 issues on hardened reliable vents for boiling water reactor (BWR) Mark I and Mark II containments.
4. Inform the Commission of how the staff addressed the Advisory Committee on Reactor Safeguards (ACRS) recommendations dated November 8, 2011.
5. Initiate a probabilistic risk assessment (PRA) methodology to evaluate potential enhancements to the capability to prevent or mitigate seismically induced fires and floods as part of Tier 1 activities described in SECY-11-0137.

Most recently, in response to recent legislative expectations and input received from stakeholders, the staff has accelerated the schedule originally proposed in SECY-11-0137, with a goal of issuing the Tier 1 orders and a request for information letter before the first anniversary of Japan's March 11, 2011, Great Tōhoku Earthquake and subsequent tsunami. As such, on February 17, 2012, the staff provided a notation vote paper to the Commission, SECY-12-0025, to address Commission requirements and to communicate the staff's proposed orders and requests for information. SECY-12-0025 is publicly available and is under review by the Commission.

Relevant implementation dates and projected actions are as follows:

Schedule Overview for Orders:

Milestones	Operating Reactors	Combined License Holders	Construction Permit Holders
Guidance Issued	August 31, 2012	August 31, 2012	August 31, 2012
1 st Update	October 31, 2012	October 31, 2012	October 31, 2012
Plan Submitted	February 28, 2013	August 31, 2013	August 31, 2013
Periodic Updates	Every six months	Every six months	Every six months
Latest Completion	December 31, 2016	Prior to initial fuel load	Prior to receipt of operating license

Schedule Overview for 50.54(f) Letter on Seismic and Flooding Reevaluations:

Milestones	Operating Reactors and Construction Permit Holders
Guidance Issued	November 30, 2012
Initial Response	January 30, 2013
Licensee Seismic Hazard Evaluations Due	September 9, 2013 (CEUS) / March 9, 2015 (WUS)
Licensee Flooding Hazard Evaluations Due	March 9, 2013 – March 9, 2015 (based on prioritization)
Future Steps	Pending NRC evaluation and prioritization, with completion of evaluations for all facilities between October 2015 and April 2016

Schedule Overview for 50.54(f) Letter on Seismic and Flooding Walkdowns:

Milestone	Operating Reactors
Guidance Issued or Endorsed	~ May 2012
Licensees Identify Walkdown Procedures To Be Used	June 9, 2012 (flooding) / July 9, 2012 (seismic)
Licensees Provide Results of Walkdowns	180 days after NRC endorsement of the walkdown procedure (~November 2012)

Schedule Overview for 50.54(f) Letter on Enhanced EP Staffing and Communications:

Milestone	Operating Reactors, Combined License Holders, and Construction Permit Holders
4.2 Guidance Issued or Endorsed	August 31, 2012
Licenses Responses	June 9, 2012 (communications) June 9, 2012 (staffing items 3 through 5) October 31, 2012 (staffing items 1 and 2) ^a
<small>^a 60 days after issuance of guidance associated with Recommendation 4.2 order</small>	

Senator BOXER. Thank you.
Yes, Hon. George Apostolakis.

**STATEMENT OF HON. GEORGE APOSTOLAKIS,
COMMISSIONER, U.S. NUCLEAR REGULATORY COMMISSION**

Mr. APOSTOLAKIS. Chairman Boxer, Ranking Member Inhofe, Chairman Carper, Ranking Member Barrasso, and members of the Committee, good morning.

I had hoped to testify today on the progress that we at the NRC have made on the Near-Term Task Force recommendations. Recently, however, some of my fellow Commissioners and I have been accused of conspiring to weaken the NRC response by deliberately delaying the implementation of these recommendations. I regret that I have to address such an accusation.

The fact is that we have acted methodically and expeditiously. I find it deeply offensive that ill motives are ascribed to us.

Nuclear safety matters are technically complex. This is one of the reasons that there is an independent five-member commission. Decisions on nuclear safety matters should not be made without careful deliberation. Such deliberation includes the technical evaluations by NRC senior management, the views of the statutory Advisory Committee on Reactor Safeguards, public meetings, and inputs from external stakeholders. This open and transparent process could be followed in the case of Fukushima because of the Task Force conclusion that the continued operation of U.S. nuclear power plants and continued licensing activities did not pose an imminent risk to public health and safety.

As a result of this process, the technical basis for implementing the Task Force recommendations has been strengthened and additional technical issues for consideration have been identified. In particular, review of the recommendations by senior NRC staff members identified additional issues such as filtration of containment vents and loss of the ultimate heat sink. The ACRS made recommendations related to seismic and flood evaluations.

Finally, public stakeholders made contributions on issues such as the distribution of potassium iodide following an accident and offered perspectives on the process of issuing orders.

I would now like to highlight Recommendation 1 as presenting an enormous challenge. The Task Force recommends that the Commission establish a regulatory framework for adequate protection that appropriately balances defense in depth and risk considerations. This translates to a significant restructuring of the NRC regulatory framework.

The Commission wisely directed the staff to pursue Recommendation 1 separately. This decision has enabled the NRC staff to begin working on those recommendations that can provide the most immediate safety benefit without delay.

I am pleased with the progress the Commission has made as well as the fact that the process for reaching decisions has been transparent and methodical. Thank you very much.

[The responses of Mr. Apostolakis to questions for the record follow:]

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Questions from: Senator Barbara Boxer

1. *On October 19, 2011, the Commission approved a charter for the longer-term review of lessons learned from the Japanese earthquake and tsunami, and the Commission requested that the staff provide a status update every 6 months in the form of a paper. Will you agree to provide me with those update papers on the day that they are made available to the Commission?*

Answer: In principle, I do not object to providing the update papers to you on the day they are submitted to the Commission. With respect to early release (before the normal 10-day period) of Commission papers, a majority vote would be needed.

2. *In the August 2, 2011 hearing, I asked you whether you could move forward on the Task Force recommendations in 90 days, and four Commissioners said "yes" for some or all of the recommendations. However, the NRC had not taken actions on any of the recommendations as of our December 15, 2011 hearing.*

- a) *Do you support conducting votes in public to increase public transparency and accountability?*

Answer: The Commission votes in public affirmation sessions on final rules and adjudicatory orders. There is a variety of ways voting could be conducted. Currently, the Commission conducts voting in writing on matters other than final rules and adjudications. Commission votes in these cases are generally not simple up-or-down decisions; they usually include extensive comments supporting, rejecting, or modifying the staff's proposals for various reasons. During this process, I benefit from the opportunity to consult with my staff and from thoughtful reflection on new information and other Commissioners' written votes. The resulting written votes provide well reasoned policy positions that explain a Commissioner's view in considerable detail. They, therefore, support formal accountability through a well documented legacy of information for the public and other stakeholders. The voting record becomes publicly available following Commission decisions. Apart from the voting process, the Commission regularly holds public meetings on key regulatory programs and policy issues.

I support considering ways to enhance the transparency and accountability of Commission voting processes. However, I would not want to lose the benefits of the current process.

- b) *Do you support making your vote on all matters related to the Task Force recommendations available to the public on the day you vote to further increase transparency and accountability?*

Answer: As I stated above, I support considering ways to enhance the transparency and accountability of Commission voting processes. I agree that, in some ways, making a vote public on the day a Commissioner votes could further increase transparency. However, I would not want to lose the benefits of the current processes. Transparency and accountability are

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both served by the present process because the votes are made public after the final Commission decision. An individual Commissioner may choose to make his or her vote public earlier. On the other hand, releasing individual Commissioner's votes prior to the completion of voting by all Commissioners and before the development of the majority position could be counterproductive to collegial deliberation. In addition, if individual Commissioners release their votes publicly before this deliberation is completed, the Commissioners may be subject to undue external attempts to influence the final decision.

3. *To what extent do you think the swift implementation of the lessons learned from Fukushima is good for public support of, and confidence in the safety of, nuclear power?*

Answer: I agree that public support and confidence in the safety of nuclear power relies to a large degree on the NRC's ability to rapidly determine the necessary regulatory actions. Swift action has been taken by the Commission in response to Fukushima by establishing the Near-Term Task Force and deciding how to disposition its recommendations. The complexity of some of the issues identified by the Task Force present technical challenges to the staff and industry that will take some time to be resolved, if we are to implement effectively the lessons learned from Fukushima. Careful implementation contributes to regulatory stability. The long-term validity of regulatory actions bolsters public confidence.

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Questions from: Senator Tom Carper

1. *During the December 15th hearing, I asked Chairman Greg Jaczko if the day-to-day NRC staff work was being compromised with the staff working on the Fukushima recommendations and the recent unrest between the Commissioners. Specifically, I asked about the licensing process for new reactors and the relicensing process for our current reactors. Chairman Greg Jaczko responded that there may be some delays in the relicensing process for our current reactors due to resource constraints.*

Over the years, I have worked to ensure the NRC has the right amount of resources to do its job and ensure the Commission can protect public safety. Can you tell me how many staff were working on relicensing leading up to the Fukushima crisis and how many staff are working on relicensing today? How many additional staff are needed to ensure there are not any delays?

In addition, I would like an update on all the relicense applications that are currently being reviewed by the NRC - including a timeline for each reactor from the day the application was docketed by the NRC to the estimated day the application is expected to be finalized.

Answer:

According to the NRC staff, at the time of the Fukushima event of March 11, 2011, 82 staff members were working on license renewal. Currently 77 staff members are working on license renewal. Of the five staff member reduction, three were reassigned due to Fukushima related work. There were also approximately 24 staff members who were spending part of their time supporting license renewal reviews in March 2011. This number has remained steady over the last year. The Commission has approved the FY 2013 budget with sufficient resources for licensing reviews to prevent potential delays.

Please refer to the following staff table for a high-level summary of the current license renewal applications under review. Detailed information on each application and the corresponding review schedule can be found on the following website:

<http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>

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Plant	Application Date	Scheduled SER Date (actual dates in bold)	Scheduled FSEIS Date (actual dates in bold)	Expected Completion Date
Pilgrim	1/27/06	6/28/07	7/27/07	In Hearing Process – Completion Date Unknown
Indian Point Units 2 & 3	4/30/07	8/11/09	12/03/10	In Hearing Process – Completion Date Unknown
Crystal River	12/18/08	TBD	TBD	TBD pending submittal of a repair plan to address containment concrete degradation
Diablo Canyon Units 1 & 2	11/24/09	6/2/11 To be supplemented as necessary	TBD	On hold pending submittal of updated seismic analysis
Columbia	1/20/10	2/12	4/12	6/12
Seabrook	6/1/10	TBD	TBD	TBD pending submittal of acceptable responses on concrete degradation
Davis-Besse	8/30/10	10/12	TBD	TBD pending submittal of updated analysis supporting environmental review
South Texas Project Units 1 & 2	10/28/10	10/12	10/12	2/13
Limerick Units 1 & 2	6/22/11	1/13	2/13	4/13
Grand Gulf	11/01/11	4/13	7/13	9/13
Callaway	12/19/11	TBD	TBD	TBD

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Questions from: Senator James Inhofe

1. *In the hearing, it was alleged that at our last NRC hearing on August 2, four of you made a commitment to this committee that you would move forward on some or all of the Near-term Task Force recommendations within 90 days, but that you had failed to do so. Please explain what you had done prior to November 2 and what you have done since, and whether you believe you have met that 90-day commitment.*

Answer: During the August 2nd hearing, I agreed with Chairman Jaczko’s goal that we should disposition the recommendations within 90 days. I cast my initial vote on the actions to be taken without delay (Tier 1 recommendations) on September 15, 2011. The Commission’s decision on this action was issued on October 18, 2011. I cast my vote to disposition the Tier 1 and Tier 2 Task Force recommendations on November 14, 2011. The Commission’s decision was finalized on December 15, 2011.

2. *In the hearing you were criticized for stalling progress on post-Fukushima safety improvements by requesting a “re-review” the Near-term Task Force 90-day report. Please describe the benefits of the broader staff review, the ACRS review, and stakeholder involvement that you would not have seen if the Commission had simply acted merely on the 90-day report.*

Answer: I favored following normal Commission processes for management review and stakeholder input. This was possible in this case because of the Near-Term Task Force finding that there was no imminent risk to U.S. plants. The Steering Committee identified actions to be implemented without delay and prioritized the Task Force recommendations. Some recommendations were prioritized as shorter-term actions that have more immediate benefits to public health and safety, and which needed to be completed first, in order to effectively inform the longer-term actions. The Commission’s decision to conduct a broader staff review allowed for valuable interactions with external stakeholders and resulted in additional issues being identified for Steering Committee consideration. The Advisory Committee on Reactor Safeguards evaluated the Task Force recommendations and provided their independent advice to the Commission. These reviews, in fact, resulted in additional recommendations for consideration.

3. *In Mr. William Daley’s December 12, 2011, letter to you, he urged you to improve your internal communications. Is Mr. Daley’s assessment a full and accurate depiction of the leadership dynamics at the Commission? If not, why not?*

Answer: The variety of issues raised in our letter was not the result of inadequacies in internal communications.

4. *Please describe any limitations under the Sunshine Act that would limit or prohibit private meetings between all five commissioners and a third-party mediator.*

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Answer: The NRC's Office of the General Counsel advises me that meetings between the five Commissioners and a third-party mediator could potentially be held in private. However, as discussed below, the Sunshine Act limits what could be discussed at such meetings.

Subject to certain enumerated exceptions, the Government in the Sunshine Act (5 U.S.C. § 552b) (Sunshine Act, or Act) prohibits a quorum of the Commission (i.e., three or more Commissioners) from meeting in private to deliberate "where such deliberations determine or result in the joint conduct or disposition of joint agency business." See §§ 552b(a)(2), (b), (c), and (e). There are, however, certain types of discussions involving a quorum of NRC Commissioners that would not implicate the Sunshine Act at all, making it unnecessary to assess the applicability of Sunshine Act exemptions or adhere to the Act's various procedural requirements for closed meetings. Such discussions are sometimes referred to as "non-Sunshine Act discussions." The Supreme Court confirmed the permissibility of such discussions in *FCC v. ITT World Communications, Inc.*, 466 U.S. 463, 471 (1984), by recognizing that Congress had carefully crafted the Sunshine Act's "meeting" definition in § 552b(a)(2) to exclude certain types of discussions from the Sunshine Act's reach. Under the Sunshine Act, if a discussion does not qualify as a "meeting" under the Act's definition, the Act's restrictions and procedures do not apply.

In line with the *ITT World* decision, NRC's Sunshine Act implementing regulations define "meeting" to encompass only "discussions [that] are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency." 10 C.F.R. § 9.101(c). In a *Federal Register* notice associated with this rule language, the NRC included "[h]ow well is the agency functioning" as an example of a potential non-Sunshine Act discussion topic, at least where the discussion stays at a "generalized 'big picture'" level. *Government in the Sunshine Act Regulations: Final Rule*, 64 Fed. Reg. 24,941 (May 10, 1999). The Commission's Internal Commission Procedures, available online at <http://www.nrc.gov/about-nrc/policy-making/internal.html>, further describe non-Sunshine Act discussions as "preliminary, informal, informational, or 'big picture.'" Internal Commission Procedures at IV-9.

Accordingly, a discussion between the five Commissioners and a mediator could presumably qualify as a non-Sunshine Act discussion, and thus be held in private, so long as the discussion focuses solely, and in a relatively generalized way, on the Commission's functioning as a collegial body and does not attempt to work towards resolution of specific items of business that are pending, or expected to be pending, before the agency. Under the Internal Commission Procedures, the General Counsel and the Secretary of the Commission are required to attend any non-Sunshine Act discussions, but the Commission may waive this provision by majority vote. Internal Commission Procedures at IV-9.

To the extent that a meeting between the five Commissioners and a mediator might benefit from getting into the specifics of pending or expected NRC business, the meeting—or, at least, the portions of the meeting that address these items of business—would likely need to fit within one or more of the ten Sunshine Act exemptions listed in § 552b(c) in order to be closed to the

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public. This would in general be a fact-specific, case-by-case determination based on the particular nature of the anticipated discussions. See § 552(d)(1). Closure of meetings pursuant to Sunshine Act exemptions requires satisfaction of certain procedural requirements specified in the Act. These include requirements that a majority of the Commission vote in favor of closure, that advance notice be given to the public, that the NRC General Counsel certify that the meeting may be properly closed, and that records of the discussion be created and maintained. See §§ 552b(d), (e), and (f).

5. *During the December 15 hearing, a number of alleged incidents of harassment, intimidation, bullying, and retaliation were discussed. Did you discuss these matters with Mr. Daley? Please list those that you did discuss.*

Answer: During my discussion with Mr. Daley, 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 to the White House. 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.

6. *Please explain why a chilled work environment is detrimental to nuclear safety.*

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.

7. *Please explain why it is critical for Commissioners to receive the best professional opinions from agency staff, unfiltered and unrestrained.*

Answer: The staff’s efforts to develop options and recommendations on a wide variety of nuclear safety and policy issues for the Commission to decide is often the result of analysis, significant interactions with stakeholders, and management review. If the staff’s final recommendations were changed to reflect certain policy preferences before submittal to the Commission, the Commission’s decisions will not be based on the opinions from staff and the final decisions may not be optimal and could result in different implications for nuclear safety.

8. *Please describe all situations where you are concerned that information was withheld from the Commission, delayed, or altered prior to transmittal to the Commission. Please describe any actions inconsistent with Internal Commission Procedures.*

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Answer: Mr. Borchardt stated in his response to a question during the December 14, 2011 hearing that "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 Commission the Fukushima Task Force report. That paper conformed to the standard format and substance of policy papers, including staff analysis and recommendations. An advance copy of this paper was distributed to the Commission on July 12, 2011. Shortly after receiving the advance copy, the Chairman called to explain that he was pulling the advance 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.

9. *When did you first learn of Chairman Jaczko's prospective proposal to cut resources to license renewals?*

Answer: I learned about the statements the Chairman made citing "resource limitations" as a reason that the Agency may delay nuclear plant license renewals and power uprates from the NRC news clips on December 8, 2011 (Nuclear Street article "NRC Requests Less Funding For 2012 Amid Plant Relicensing Delays"). The Chairman also mentioned this in response to a question from Senator Carper during the December EPW hearing, where he stated: "if we have resource constraints as result of the Fukushima activities, we may look at license renewal as an area to pull resources."

I was aware of the Chairman's June 24, 2011, Budget Proposal for fiscal year (FY) 2013 in which he proposed reducing performance metric targets for all licensing actions, including license renewals. The Chairman also proposed to decrease the number of licensing actions completed per year in FY 2013. In its August 19, 2011 decision, the Commission did not agree to delay or decrease licensing actions and voted to retain the agency's existing licensing metrics.

a) *Did he discuss these with you prior to the December 6 press briefing and/or the December 15 hearing?*

Answer: I don't recall.

b) *Since the December 15 hearing has he provided you with any information on this matter?*

Answer: No.

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10. *You have commented several times that the Fukushima accident was neither unthinkable nor unforeseen. Please elaborate and explain why those facts are important in considering regulatory actions in the U.S.*

Answer: Many people have referred to the events at Fukushima as unthinkable or unforeseen and imply that we should focus on protecting nuclear plants from unimaginable events. However, there is evidence that the historical record of tsunamis had not been used properly to determine the design basis at Fukushima Dai-ichi and, consequently, the protection of the plants was not sufficient. In addition, the location of safety-significant equipment was less than optimal with respect to protection against flooding, which a simple risk assessment would have revealed. Finally, as the Japanese government reported to the International Atomic Energy Agency, the regulatory authority was not sufficiently independent.

The accident was not of extremely low probability, i.e., it was not “unthinkable” or “unforeseen.” Preliminary estimates of the frequency of the sequence of events range from 1 in 1000 years and upwards. These frequencies are intolerably high in the nuclear safety arena. These observations suggest that we should be mindful of striking a proper balance between confirming the correctness of the design basis and expanding the design basis of U.S. plants.

Although the public has an understandable sense of urgency, thoughtful analysis and deliberation should not suffer as a result of a technically unjustifiable heightened sense of urgency resulting from failure to acknowledge that significant mistakes contributed to the accident. Not every lesson learned from Fukushima is necessarily of higher priority than ongoing work on existing safety issues, e.g., fire protection. This is one of the reasons that I favored sending the Near-Term Task Force recommendations to the Steering Committee for assessment and evaluation in consultation with stakeholders, including the ACRS.

11. *In the hearing you stated that agency staff have come to you and said “What’s in the report is not what we think.” Please provide detailed examples.*

Answer: The example I was referring to during the hearing was 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.

12. *Please summarize all actions taken to re-evaluate the safety and security of nuclear plants in the United States, and to implement the recommendations of the Near-term Task Force’s 90-day report. Please include a timetable of all relevant implementation dates for projected actions and those already taken.*

Answer: Consistent with the NRC mission of ensuring the protection of public health and safety, the NRC is taking action as a result of the events at the Fukushima Dai-ichi nuclear power plant.

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In April 2011, the Commission established a senior-level task force known as the Near-Term Task Force (NTTF) to conduct both a short- and long-term analysis of potential lessons learned. The report produced by the NTTF, SECY-11-0093, “Near Term Report and Recommendations for Agency Actions following the Events in Japan,” dated July 12, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11186A950); identified twelve major recommendations with the potential to improve the safety of U.S. nuclear facilities

The NRC is taking action on these NTTF recommendations. The NRC staff sought external stakeholder feedback in a public meeting on August 31, 2011, regarding the NTTF recommendations that stakeholders consider to be most important and that the NRC should undertake in the near-term. These recommendations were identified in a notation vote paper (SECY-11-0124, “Recommended Actions to be taken Without Delay from the Near-Term Task Force Report”) dated September 9, 2011. A Commission meeting was conducted on September 14, 2011, during which representatives from other Federal and state agencies, the nuclear industry, and interested non-governmental organizations provided their views on the NRC staff’s proposed near-term actions.

On October 18, 2011, the Commission directed the NRC staff in Staff Requirements Memorandum (SRM)- SECY-11-0124, “Recommended Actions to be taken Without Delay from the Near Term Task Force Report,” (ADAMS Accession No. ML112911571) to begin action without delay on those NTTF recommendations with the greatest potential for safety improvement in the near-term. In that SRM, the Commission directed that the NRC should strive to complete and implement the lessons-learned from the Fukushima Dai-ichi accident within 5 years – by 2016. In addition, the Commission directed that the staff should designate the station blackout (SBO) rulemaking as a high-priority rulemaking with a goal of completion within 24-30 months of the October 18, 2011 SRM.

The staff has implemented the Commission direction outlined in SRM- SECY-11-0124 and has begun taking actions on those NTTF recommendations with the greatest potential for safety improvement without delay. In order to do this effectively, the staff performed an assessment of each NTTF recommendation to determine the required regulatory activities, an estimated schedule, and associated resource impacts. Once this information was attained, the staff began to prioritize the NTTF recommendations into three tiers: Tier 1, Tier 2, and Tier 3. To further inform the prioritization of the NTTF recommendations, the NRC staff conducted a public meeting with representatives of the nuclear industry on September 21, 2011, in order to better understand their current plans and actions to address the lessons-learned from the Fukushima Dai-ichi event. The NRC staff’s proposed prioritization of all of the NTTF recommendations was submitted in a notation vote paper (SECY-11-0137, “Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned”) dated October 3, 2011 (ADAMS Accession No. ML11272A111). A Commission meeting was conducted on October 11, 2011, during which representatives from other Federal and state agencies, the nuclear industry, and interested non-governmental organizations provided their views on the NRC staff’s proposed prioritization.

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SECY-11-0137 was reviewed by the Commission and in a December 15, 2011, SRM for SECY-11-0137, “Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned,” (ADAMS Accession No. ML113490055) the Commission approved the staff’s recommended prioritization, subject to direction provided in SRM-SECY-11-0124. The Commission also listed the following staff requirements in SRM-SECY-11-0137:

1. Consult with the Commission via notation vote papers before issuing any orders that would lead to a change in the design basis of licensed plants.
2. Inform the Commission 5 business days before issuing letters under 10 CFR § 50.54(f) associated with the regulatory activities outlined in SECY-11-0137.
3. Inform the Commission of the results of its review of six additional staff recommendations, that went beyond those prepared by the NTTF but which the staff determined had a clear nexus to the Fukushima Dai-ichi event and may warrant additional action. This includes the results of the staff’s consideration of filtration of containment vents in the context of the existing Tier 1 issues on hardened reliable vents for boiling water reactor (BWR) Mark I and Mark II containments.
4. Inform the Commission of how the staff addressed Advisory Committee on Reactor Safeguards (ACRS) recommendations, dated November 8, 2011 (ADAMS Accession No. ML11311A264).
5. Initiate a probabilistic risk assessment (PRA) methodology to evaluate potential enhancements to the capability to prevent or mitigate seismically induced fires and floods as part of Tier 1 activities described in SECY-11-0137.

Most recently, in response to the recent legislation (the December 2011 Consolidated Appropriations Act, 2012 (Public Law (PL) 112-74)) and input it received from stakeholders, the staff has accelerated the schedule originally proposed in SECY-11-0137, with a goal of issuing the Tier 1 orders and a request for information letter before the first anniversary of Japan’s March 11, 2011, Great Tōhoku Earthquake and subsequent tsunami. As such, the staff has drafted a notation vote paper (SECY-12-0025, “Proposed Orders and Requests for Information in Response to Lessons-Learned from Japan’s March 11, 2011, Great Tōhoku Earthquake and Tsunami”) (ADAMS Accession No. ML12039A103) dated February 17, 2012, to address requirements stated in SRM-SECY-11-0137, and to communicate the staff’s proposed orders and request for information. SECY-12-0025 is currently under review by the Commission.

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The following information was provided by the NRC staff.

Relevant implementation dates and projected actions are as follows:
 Schedule Overview for Orders:

Item	Operating Reactors	Commercial Reactors	Construction Reactors
Guidance Issued	August 31, 2012	August 31, 2012	August 31, 2012
1 st Update	October 31, 2012	October 31, 2012	October 31, 2012
Plan Submitted	February 28, 2013	August 31, 2013	August 31, 2013
Periodic Updates	Every six months	Every six months	Every six months
Latest Completion	December 31, 2016	Prior to initial fuel load	Prior to receipt of operating license

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Schedule Overview for 50.54(f) Letter on Seismic and Flooding Reevaluations:

Question	Operational Response and Evaluation Letter Permit History
Guidance Issued	November 30, 2012
Initial Response	January 30, 2013
Licensee Seismic Hazard Evaluations Due	September 9, 2013 (CEUS) / March 9, 2015 (WUS)
Licensee Flooding Hazard Evaluations Due	March 9, 2013 – March 9, 2015 (based on prioritization)
Future Steps	Pending NRC evaluation and prioritization, with completion of evaluations for all facilities between October 2015 and April 2019

Schedule Overview for 50.54(f) Letter on Seismic and Flooding Walkdowns:

Question	Operational Response
Guidance Issued or Endorsed	~ May 2012
Licensees Identify Walkdown Procedures To Be Used	June 9, 2012 (flooding) / July 9, 2012 (seismic)
Licensees Provide Results of Walkdowns	180 days after NRC endorsement of the walkdown procedure (~ November 2012)

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Schedule Overview for 50.54(f) Letter on Enhanced EP Staffing and Communications:

Milestones	Operating Reactor / Commercial License Holders and Extension Participants
4.2 Guidance Issued or Endorsed	August 31, 2012
Licensee Responses	June 9, 2012 (communications) June 9, 2012 (staffing items 3 through 5) October 31, 2012 (staffing items 1 and 2)*

* an approximate sequence of guidance associated with Recommendation 4.2 order

Senator BOXER. Thank you.
And finally, last but not least, Hon. William Ostendorff.

**STATEMENT OF HON. WILLIAM C. OSTENDORFF,
COMMISSIONER, U.S. NUCLEAR REGULATORY COMMISSION**

Mr. OSTENDORFF. Thank you, Madam Chairman, Ranking Member Inhofe, members of the Committee, for the chance to be before you today.

It has been nearly 4 months since our last appearance before this Committee. I am pleased to say to you today, the Commission has provided clear direction to the NRC staff on an appropriate path for dispositioning the Near-Term Task Force recommendations and for approving regulatory actions that can be implemented without delay.

Since I last appeared before you in August, I continue to take steps to enhance my own understanding of these issues by looking at measures in place at U.S. nuclear power plants to deal with beyond design basis events and natural hazards. In October Commissioner Magwood and I visited Diablo Canyon and San Onofre nuclear power plants in California. During the visits to these facilities, we looked at seismic hazards, tsunami protection walls, and emergency preparedness.

While in California, Commissioner Magwood and I also took the opportunity to meet with the San Luis Obispo Mothers for Peace, the San Luis Obispo County Board of Supervisors, and State emergency officials to listen to their feedback and hear their concerns. I have also recently traveled to the Wolf Creek plant in Kansas and the D.C. Cook plant in Michigan to look at measures in place for station blackout.

Because of the importance of the NRC's post-Fukushima actions, the Commission has set an ambitious schedule for a series of voting papers related to the NRC staff's review of the Near-Term Task Force recommendations. Over the last 20 months as a Commissioner, I have developed a great appreciation and respect for the competence and professionalism of the NRC staff. Their input to the Commission's decision process is vitally important, which is why I voted to ensure that their technical expertise has been provided to the Commission for our decisionmaking. The three Fukushima-related votes I have cast since our last meeting here with you in August have been shaped in large part by their insight.

I join Commissioner Apostolakis in addressing recent reports in the media that we have been accused of slow walking and not taking steps for nuclear safety. I share Commissioner Apostolakis' statement of offense at those statements. These statements are inaccurate, they are misleading. We are not dealing with simple go or no-go decisions. These are complicated, highly technical matters requiring focused consideration and responsible decisionmaking.

The senior level steering committee that we have as a Commission chartered has provided us with logical recommendations and prioritization of actions. I am pleased to tell all the members of this Committee that I am personally confident and pleased with where the Commission is making these decisions. I appreciate and respect the Committee's oversight role, and I look forward to your questions.

[The responses of Mr. Ostendorff to questions for the record follow:]

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Questions for Commissioner Ostendorff
Senator Barbara Boxer

1. On October 19, 2011, the Commission approved a charter for the longer-term review of lessons learned from the Japanese earthquake and tsunami, and the Commission requested that the staff provide a status update every 6 months in the form of a paper. Will you agree to provide me with those update papers on the day that they are made available to the Commission?

Answer

I commit to working with my colleagues on the Commission to provide the Committee the updated papers when they are made available to the Commission.

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Senator Barbara Boxer

2. In the August 2, 2011 hearing, I asked whether you could move forward on the Task Force recommendations in 90 days, and four Commissioners said "yes" for some or all of the recommendations. However, the NRC had not taken actions on any of the recommendations as of our December 15, 2011 hearing.

- a. Do you support conducting votes in public to increase public transparency and accountability?
- b. Do you support making your vote on all matters related to the Task Force recommendations available to the public on the day you vote to further increase transparency and accountability?

Answer

Regarding my actions related to the Fukushima Near Term Task Force recommendations, I believe that I have acted in a timely and responsible manner. Below is a list of all papers that the Commission has acted on arising from the Task Force, along with the date in which I voted.

- SECY-11-0093 – July 12, 2011 – Near-Term Report and Recommendations for Agency Actions Following Events in Japan
 - I voted on July 27, 2011.
 - SECY-11-0117 – August 26, 2011 – Proposed Charter for the Longer-Term Review of Lessons Learned from the March 11, 2011, Japanese Earthquake and Tsunami
 - I voted on August 31, 2011.
 - SECY-11-0124 – September 9, 2011 – Recommended Actions to be Taken without Delay from the Near-Term Task Force Report
 - I voted on September 16, 2011.
 - SECY-11-0137 – October 3, 2011 – Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned
 - I voted on October 31, 2011.
- a. I am committed to making decisions in as open a manner as possible, consistent with the need to maintain a decision-making process that allows a free exchange of ideas and fosters well-considered decisions. I believe that our current voting process already provides adequate public transparency and accountability.

The Commission's current procedures allow for the Commission's decision-making process to be thoroughly documented through a written voting record called the notation voting process. The written voting record is typically made publicly available. This process has served the Commission well over the years, and provides several major advantages. First, it gives each Commissioner an opportunity to explain his or her rationale behind each vote. The notation voting process also records the decision-making for historical reference, which is an invaluable tool in maintaining regulatory stability. Finally, the notation voting process also provides each Commissioner the

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opportunity to carefully and thoroughly analyze the highly-technical issues that are typically before the Commission.

- b. I support making my vote on all matters related to the Task Force recommendations public according to the process outlined in the current Internal Commission Procedures. The Commission's procedures provide for the release of voting records following closure of the voting process, as well as the release of individual votes prior to the closure of the voting process.

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Questions for Commissioner Ostendorff
Senator Barbara Boxer

3. To what extent do you think the swift implementation of the lessons learned from Fukushima is good for public support of, and confidence in the safety of, nuclear power?

Answer

I believe that timely and thoughtful regulatory actions help to build public trust and confidence in the regulator. That said, nuclear safety matters are technically complex. Decisions on nuclear safety matters must be made with careful deliberation with as much transparency as possible.

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Questions for Commissioner Ostendorff
Senator Thomas R. Carper

1. During the December 15th hearing, I asked Chairman Greg Jaczko if the day-to-day NRC staff work was being compromised with the staff working on the Fukushima recommendations and the recent unrest between the Commissions. Specifically, I asked about the licensing process for new reactors and the relicensing process for our current reactors. Chairman Greg Jaczko responded that there may be some delays in the relicensing process for our current reactors due to resource constraints.

Over the years, I have worked to ensure the NRC has the right amount of resources to do its job and ensure the Commission can protect public safety. Can you tell me how many staff were working on relicensing leading up to the Fukushima crisis and how many staff are working on relicensing today? How many additional staff are needed to ensure there are not any delays?

In addition, I would like an update on all the relicense applications that are currently being reviewed by the NRC – including a timeline for each reactor from the day the application was docketed by the NRC to the estimated day the application is expected to be finalized.

Answer

At the time of the Fukushima Event of March 11, 2011, 82 staff members were working on relicensing on a full time basis. Currently 77 staff members are working full-time on relicensing. Of the five staff member reduction, three of those were reassigned due to Fukushima support. There were also approximately 24 additional NRC staff members who were spending part of their time supporting license renewal reviews in March 2011. This number has remained steady over the last year.

Currently, no additional staff are necessary to ensure there are not any license renewal delays due to Fukushima impacts. This is due to delays unrelated to Fukushima stemming from technical and environmental aspects of the license renewal reviews, as well as a general reduction in the number of license renewal applications expected over the next few years. However, impacts due to Fukushima may change over time and we cannot estimate those future impacts on license renewal.

The following table presents a high-level summary of the current license renewal applications under review. More detailed information on each application and the corresponding review schedule can be found on the following website:
<http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>

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Plant	Application Date	Scheduled SER Date (actual dates in bold)	Scheduled FSEIS Date (actual dates in bold)	Expected Completion Date
Pilgrim	1/27/06	6/28/07	7/27/07	In Hearing Process – Completion Date Unknown
Indian Point Units 2 & 3	4/30/07	8/11/09	12/03/10	In Hearing Process – Completion Date Unknown
Crystal River	12/18/08	TBD	TBD	TBD pending submittal of a repair plan to address containment concrete degradation
Diablo Canyon Units 1 & 2	11/24/09	6/2/11 To be supplemented as necessary	TBD	On hold pending submittal of updated seismic analysis
Columbia	1/20/10	2/12	4/12	6/12
Seabrook	6/1/10	TBD	TBD	TBD pending submittal of acceptable responses on concrete degradation
Davis-Besse	8/30/10	10/12	TBD	TBD pending submittal of updated analysis supporting environmental review
South Texas Project Units 1 & 2	10/28/10	10/12	10/12	2/13
Limerick Units 1 & 2	6/22/11	1/13	2/13	4/13
Grand Gulf	11/01/11	4/13	7/13	9/13
Callaway	12/19/11	TBD	TBD	TBD

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Questions for Commissioner Ostendorff
Senator James M. Inhofe

1. In the hearing, it was alleged that at our last NRC hearing on August 2, four of you made a commitment to this committee that you would move forward on some or all of the Near-term Task Force recommendations within 90 days, but that you had failed to do so. Please explain what you had done prior to November 2 and what you have done since, and whether you believe you have met that 90-day commitment.

Answer

Regarding my actions related to the Fukushima Near Term Task Force recommendations prior to November 2, 2011, I believe that I acted in a timely and responsible manner. Below is a list of all papers that the Commission has acted on arising from the Task Force, along with the date in which I voted.

- SECY-11-0093 – July 12, 2011 – Near-Term Report and Recommendations for Agency Actions Following Events in Japan
 - I voted on July 27, 2011.
- SECY-11-0117 – August 26, 2011 – Proposed Charter for the Longer-Term Review of Lessons Learned from the March 11, 2011, Japanese Earthquake and Tsunami
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- SECY-11-0124 – September 9, 2011 – Recommended Actions to be Taken without Delay from the Near-Term Task Force Report
 - I voted on September 16, 2011.
- SECY-11-0137 – October 3, 2011 – Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned
 - I voted on October 31, 2011.

Since November 2, 2011, the Commission has completed voting on SECY-11-0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned." In a December 15, 2011 Staff Requirements Memorandum, 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). The Commission also approved moving forward with analyzing several additional issues the task force had not recommended. At least one such issue is near the top of the agency's action list.

On February 17, 2012, the staff transmitted to the Commission SECY-12-0025, "Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tōhoku Earthquake and Tsunami." I intend to act on this matter promptly.

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Questions for Commissioner Ostendorff
Senator James M. Inhofe

2. In the hearing you were criticized for stalling progress on post-Fukushima safety improvements by requesting a "re-review" [of] the Near-term Task Force 90-day report. Please describe the benefits of the broader staff review, the ACRS review, and stakeholder involvement that you would not have seen if the Commission had acted merely on the 90-day report.

Answer

Consistent with the NRC's Principles of Good Regulation, the Commission sought broader staff review, Advisory Committee on Reactor Safeguards (ACRS) review, and stakeholder involvement, which has provided the Commission with substantial benefits. For example, based in part on the numerous public meetings with all stakeholders, the nuclear industry has begun to move forward voluntarily to address several areas of safety significance. Also, because of the agency's interactions with stakeholders, we identified several additional issues the task force had not recommended. At least one such issue is near the top of the agency's action list.

I have appreciated the insights and comments provided by interested parties outside the Agency. These discussions have helped me gain a broader understanding of local concerns, industry capabilities, scientific and engineering considerations, and national priorities. I continue to look forward to further input from all our external stakeholders. Further, I have greatly benefited from the input provided by the ACRS throughout our review process. I have found the ACRS's reviews to be very insightful and illustrative of the significant value, expertise, and experience that the ACRS has to offer the Commission.

The reply of Mr. Ostendorff to Senator Inhofe's question #3 is not available to the public.

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Questions for Commissioner Ostendorff
Senator James M. Inhofe

4. Please describe any limitations under the Sunshine Act that would limit or prohibit meetings between all five commissioners and a third-party mediator.

Answer

Meetings between the five Commissioners and a third-party mediator could potentially be held in private. As discussed below, however, the Sunshine Act limits what could be discussed at such meetings.

Subject to certain enumerated exceptions, the Government in the Sunshine Act (5 U.S.C. § 552b) (Sunshine Act, or Act) prohibits a quorum of the Commission (i.e., three or more Commissioners) from meeting in private to deliberate "where such deliberations determine or result in the joint conduct or disposition of joint agency business." There are, however, certain types of discussions involving a quorum of NRC Commissioners that would not implicate the Sunshine Act at all, making it unnecessary to assess the applicability of Sunshine Act exemptions or adhere to the Act's various procedural requirements for closed meetings. Such discussions are sometimes referred to as "non-Sunshine Act discussions." The Supreme Court confirmed the permissibility of such discussions in *FCC v. ITT World Communications, Inc.*, 466 U.S. 463, 471 (1984), by recognizing that Congress had carefully crafted the Sunshine Act's "meeting" definition to exclude certain types of discussions from the Sunshine Act's reach. Under the Sunshine Act, if a discussion does not qualify as a "meeting" under the Act's definition, the Act's restrictions and procedures do not apply.

In line with the *ITT World* decision, NRC's Sunshine Act implementing regulations define "meeting" to encompass only "discussions [that] are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency." In a *Federal Register* notice associated with this rule language, the NRC included "[h]ow well is the agency functioning" as an example of a potential non-Sunshine Act discussion topic, at least where the discussion stays at a "generalized 'big picture'" level. The Commission's Internal Commission Procedures further describe non-Sunshine Act discussions as "preliminary, informal, informational, or 'big picture.'"

Accordingly, a discussion between the five Commissioners and a mediator could presumably qualify as a non-Sunshine Act discussion, and thus be held in private, so long as the discussion focuses solely, and in a relatively generalized way, on the Commission's functioning as a collegial body and does not attempt to work towards resolution of specific items of business that are pending, or expected to be pending, before the agency. Under the Internal Commission Procedures, the General Counsel and the Secretary of the Commission are required to attend any non-Sunshine Act discussions, but the Commission may waive this provision by majority vote.

To the extent that a meeting between the five Commissioners and a mediator might benefit from getting into the specifics of pending or expected NRC business, the meeting—or, at least, the portions of the meeting that address these items of business—would likely need to fit within one

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or more of the ten Sunshine Act exemptions in order to be closed to the public. This would in general be a fact-specific, case-by-case determination based on the particular nature of the anticipated discussions. Closure of meetings pursuant to Sunshine Act exemptions requires satisfaction of certain procedural requirements specified in the Act. These include requirements that a majority of the Commission vote in favor of closure, that advance notice be given to the public, that the NRC General Counsel certify that the meeting may be properly closed, and that records of the discussion be created and maintained.

The reply of Mr. Ostendorff to Senator Inhofe's question #5 is not available to the public.

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Questions for Commissioner Ostendorff
Senator James M. Inhofe

6. Please explain why a chilled work environment is detrimental to nuclear safety.

Answer

An ineffective safety culture can produce a chilled work environment, where employees are afraid to speak up and raise safety concerns for fear of retaliation. A chilled work environment is detrimental to nuclear safety for a number of reasons. One in particular is that, as a practical matter, the NRC, even with its many on-site and special inspectors, can only review a fraction of licensee activities. Because of this, the NRC has placed a high value on ensuring that the thousands of nuclear industry employees feel free to raise potential regulatory and safety concerns to the licensee and/or the NRC without fear of retaliation. If employees feel chilled, and are thus fearful of raising safety concerns either to their employer or the NRC, an untold number of potential regulatory and safety concerns will go unreported, thus allowing the problems to continue unresolved. That is an unacceptable situation.

Just as with the regulated industry, a chilled work environment at the Nation's civilian nuclear safety regulator cannot be tolerated because it adversely affects our agency's ability to carry out our safety mission. Specifically, 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.

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Questions for Commissioner Ostendorff
Senator James M. Inhofe

7. Please explain why it is critical for Commissioners to receive the best professional opinions from agency staff, unfiltered and unrestrained.

Answer

As a Commissioner, I need assurance that whenever I receive a technical, legal, or policy matter for decision-making, that that matter represents the unfiltered best judgments of the staff. Without that, I cannot be an effective decision-maker.

At the NRC, we champion our staff's ability to always provide their best professional opinions. In fact, it is NRC policy to maintain a working environment that encourages employees to make known their best professional judgments even though they may differ from the prevailing staff view or disagree with a management decision.

The reply of Mr. Ostendorff to Senator Inhofe's question #8 is not available to the public.

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Questions for Commissioner Ostendorff
Senator James M. Inhofe

9. When did you first learn of Chairman Jaczko's prospective proposal to cut resources to license renewals?

- a. Did he discuss these with you prior to the December 6 press briefing and/or the December 15 hearing?
- b. Since the December 15 hearing has he provided you with any information on this matter?

Answer

I first heard about Chairman Jaczko's prospective proposal to cut resources to license renewals when reading media reports in the days following the Chairman's December 6, 2011, press briefing.

- a. No, the Chairman did not discuss his proposal prior to the December 6, 2011, press briefing.
- b. No.

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10. Please summarize all actions taken to re-evaluate the safety and security of nuclear plants in the United States, and to implement the recommendations of the Near-term Task Force's 90-day report. Please include a timetable of all relevant implementation dates for projected actions and those already taken.

Answer

Consistent with the NRC mission of ensuring the protection of public health and safety, the NRC is taking action as a result of the events at the Fukushima Dai-ichi nuclear power plant. In April 2011, the Commission established a senior-level task force known as the Near-Term Task Force (NTTF) to conduct both a short- and long-term analysis of potential lessons-learned. The report produced by the NTTF, SECY-11-0093, "Near Term Report and Recommendations for Agency Actions following the Events in Japan," dated July 12, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11186A950), identified twelve major recommendations with the potential to improve the safety of U.S. nuclear facilities

The NRC is taking action on these NTTF recommendations. The NRC staff sought external stakeholder feedback in a public meeting on August 31, 2011, regarding the NTTF recommendations that stakeholders consider to be most important and that the NRC should undertake in the near-term. These recommendations were identified in a notation vote paper (SECY-11-0124, "Recommended Actions to be taken Without Delay from the Near-Term Task Force Report") (ADAMS Accession Nos. ML11245A127 and ML11245A144) dated September 9, 2011. A Commission meeting was conducted on September 14, 2011, during which representatives from other Federal and state agencies, the nuclear industry, and interested non-governmental organizations provided their views on the NRC staff's proposed near-term actions.

On October 18, 2011, the Commission directed the NRC staff in Staff Requirements Memorandum (SRM) - SECY-11-0124, "Recommended Actions to be taken Without Delay from the Near Term Task Force Report," (ADAMS Accession No. ML112911571) to begin action without delay on those NTTF recommendations with the greatest potential for safety improvement in the near-term. In that SRM, the Commission directed that the NRC should strive to complete and implement the lessons-learned from the Fukushima Dai-ichi accident within 5 years – by 2016. In addition, the Commission directed that the staff should designate the station blackout (SBO) rulemaking as a high-priority rulemaking with a goal of completion within 24-30 months of the October 18, 2011, SRM.

The staff has implemented the Commission direction outlined in SRM-SECY-11-0124 and has begun taking actions on those NTTF recommendations with the greatest potential for safety improvement without delay. In order to do this effectively, the staff performed an assessment of each NTTF recommendation to determine the required regulatory activities, an estimated schedule, and associated resource impacts. Once this information was attained, the staff began to prioritize the NTTF recommendations into three tiers: Tier 1, Tier 2, and Tier 3. To further inform the prioritization of the NTTF recommendations, the NRC staff conducted a public meeting with representatives of the nuclear industry on September 21, 2011, in order to better

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understand their current plans and actions to address the lessons-learned from the Fukushima Dai-ichi event. The NRC staff's proposed prioritization of all of the NTF recommendations was submitted in a notation vote paper (SECY-11-0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned") dated October 3, 2011 (ADAMS Accession No. ML11272A111). A Commission meeting was conducted on October 11, 2011, during which representatives from other Federal and state agencies, the nuclear industry, and interested non-governmental organizations provided their views on the NRC staff's proposed prioritization.

SECY-11-0137 was reviewed by the Commission and in a December 15, 2011, SRM for SECY-11-0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned," (ADAMS Accession No. ML113490055) the Commission approved the staff's recommended prioritization, subject to direction provided in SRM-SECY-11-0124. The Commission also listed the following staff requirements in SRM-SECY-11-0137:

1. Consult with the Commission via notation vote papers before issuing any orders that would lead to a change in the design basis of licensed plants.
2. Inform the Commission 5 business days before issuing letters under 10 CFR § 50.54(f) associated with the regulatory activities outlined in SECY-11-0137.
3. Inform the Commission of the results of its review of six additional staff recommendations, that went beyond those prepared by the NTF but which the staff determined had a clear nexus to the Fukushima Dai-ichi event and may warrant additional action. This includes the results of the staff's consideration of filtration of containment vents in the context of the existing Tier 1 issues on hardened reliable vents for boiling water reactor (BWR) Mark I and Mark II containments.
4. Inform the Commission of how the staff addressed Advisory Committee on Reactor Safeguards (ACRS) recommendations, dated November 8, 2011 (ADAMS Accession No. ML11311A264).
5. Initiate a probabilistic risk assessment (PRA) methodology to evaluate potential enhancements to the capability to prevent or mitigate seismically induced fires and floods as part of Tier 1 activities described in SECY-11-0137.

Most recently, in response to the recent legislation (the December 2011 Consolidated Appropriations Act, 2012 (Public Law (PL) 112-74)) and input it received from stakeholders, the staff has accelerated the schedule originally proposed in SECY-11-0137, with a goal of issuing the Tier 1 orders and a request for information letter before the first anniversary of Japan's March 11, 2011, Great Tōhoku Earthquake and subsequent tsunami. As such, the staff has drafted a notation vote paper (SECY-12-0025, "Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tōhoku Earthquake and Tsunami") (ADAMS Accession No. ML12039A103) dated February 17, 2012, to address requirements stated in SRM-SECY-11-0137, and to communicate the staff's proposed orders and request for information. SECY-12-0025 is currently under review by the Commission.

Relevant implementation dates and projected actions are as follows:

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Schedule Overview for Orders:

Milestone	Operating Reactors	Combined License Holders	Construction Permit Holders
Guidance Issued	August 31, 2012	August 31, 2012	August 31, 2012
1 st Update	October 31, 2012	October 31, 2012	October 31, 2012
Plan Submitted	February 28, 2013	August 31, 2013	August 31, 2013
Periodic Updates	Every six months	Every six months	Every six months
Latest Completion	December 31, 2016	Prior to initial fuel load	Prior to receipt of operating license

Schedule Overview for 50.54(f) Letter on Seismic and Flooding Reevaluations:

Milestone	Operating Reactors and Construction Permit Holders
Guidance Issued	November 30, 2012
Initial Response	January 30, 2013
Licensee Seismic Hazard Evaluations Due	September 9, 2013 (CEUS) / March 9, 2015 (WUS)
Licensee Flooding Hazard Evaluations Due	March 9, 2013 – March 9, 2015 (based on prioritization)
Future Steps	Pending NRC evaluation and prioritization, with completion of evaluations for all facilities between October 2016 and April 2019

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Schedule Overview for 50.54(f) Letter on Seismic and Flooding Walkdowns:

Milestone	Operating Reactors
Guidance Issued or Endorsed	~ May 2012
Licensees Identify Walkdown Procedures To Be Used	June 9, 2012 (flooding) / July 9, 2012 (seismic)
Licensees Provide Results of Walkdowns	180 days after NRC endorsement of the walkdown procedure (~November 2012)

Schedule Overview for 50.54(f) Letter on Enhanced EP Staffing and Communications:

Milestone	Operating Reactors, Combined License Holders, and Construction Permit Holders
4.2 Guidance Issued or Endorsed	August 31, 2012
Licensee Responses	June 9, 2012 (communications) June 9, 2012 (staffing items 3 through 6) October 31, 2012 (staffing items 1 and 2)*
	* 60 days after issuance of guidance associated with Recommendation 4.2 order

Senator BOXER. Thank you.

Thank you all for your testimony.

I am addressing this statement to all of us here as Senators, because I think there is a reason that the public approval of the Congress is 9 percent, and most of that 9 percent probably are our families, and if we don't get home by Christmas, they will leave us, too.

But I think a lot about why. And one of the things I come up with is that people look at us and they see us involved in personal attacks, us, rather than dealing with the policy. There is nothing wrong with having a policy dispute. We have them here, and I think we do very well.

In this case, I am very disappointed with my colleagues on the other side. Because I think that this hearing, they would almost try to turn it into what Chairman Issa did yesterday, rather than look at the issues that you all addressed, frankly, happily, today. Good for you. The safety questions.

So here is the thing. Our Committee is charged with ensuring that you do your job to make certain that our nuclear plants are as safe as they can be. And we all know that.

And I will tell you, as long as I am Chairman, because some people sort of asked, they want to have some more hearings on this personnel matter. I am going to be clear, and maybe you can get another Chairman, I hope not, I hope you trust me enough, but I have to say that I will not allow this Committee to conduct witch hunts against anybody. Anybody. That is not what our function is.

And I would also say in reference to whistleblowing—and I mentioned this to Senator Carper—when I look at the nuclear industry over the years, because I have watched it over the years, we have had very interesting experiences with nuclear power in California. In most communities, they have decided they would rather go another way, and in some communities they have embraced it. But I will tell you this: the whistleblowers are the ones that blow the whistle on safety problems. They are not the whistleblowers who blow the whistle on someone they don't like, or they think is this or that. So being a whistleblower is in the eye of the beholder.

Now, Mr. Chairman, since we are supposed to be talking about safety issues, I want to ask you this question. I got a commitment from four out of the five that in 90 days you would vote on these. Mr. Ostendorff said, well, it is very complicated and took longer. OK. When are you planning to have a meeting where you are going to vote on these recommendations following Fukushima? What is your plan?

Mr. JACZKO. Well, we won't at this point. We have taken them kind of piecemeal and looked at them in various ways. And the way the Commission functions, we don't have meetings to actually vote on activities.

Senator BOXER. OK. So when will you begin, do you vote on the various recommendations? Let me put it that way.

Mr. JACZKO. In general, I would say what we have voted on is the process to have the staff begin looking at the recommendations. But I would say in the first vote that I cast, I endorsed all the recommendations. I think in bits and pieces, the Commission has looked at various of the recommendations. But I wouldn't say we

have kind of given a clear up or down vote on each of the recommendations yet.

Senator BOXER. So in your opinion, as Chairman, how many of those recommendations is there majority support for going forward?

Mr. JACZKO. I would probably, the clearest are the ones for which we have said are short-term recommendations. And those, it is basically five of the recommendations, I would say at this point there is majority support to move forward on.

Senator BOXER. Would you and your fellow Commissioners send a letter to Senator Inhofe and myself outlining which five those would be?

Mr. JACZKO. Absolutely.

Senator BOXER. OK. Now I am going to ask about certain of those. According to experts, including the Institute of Nuclear Power Operations, the loss of electricity, as Senator Alexander has said, triggered the meltdown at the Fukushima plants, because it prevented the reactors from being properly cooled. To address an extended loss of power, the Task Force recommended that nuclear plants demonstrate they can run essential cooling and monitoring systems for up to 72 hours without being connected to the electricity grid.

Mr. Magwood, starting from you, yes or no, do you agree with that recommendation?

Mr. MAGWOOD. I think that the recommendation, the thrust of the recommendation is correct. The specifics are the problem that I had with it. Seventy-two hours may or may not be the right number. So we started the process to find out how to approach that, and we have already launched that. Staff is already working with—

Senator BOXER. So do you support having a system running for a period of time without being hooked up? Do you support that recommendation?

Mr. MAGWOOD. Yes.

Senator BOXER. How about you, Ms. Svinicki?

Ms. SVINICKI. I believe this is Recommendation 4.1, and I did vote in support of beginning that activity.

Senator BOXER. Good.

You, Mr. Chairman?

Mr. JACZKO. Yes.

Senator BOXER. You, sir?

Mr. APOSTOLAKIS. Yes.

Senator BOXER. You, sir?

Mr. OSTENDORFF. Chairman Boxer, I voted on this on September 16th, and also posited that this should be a high priority decision-making within 24 to 30 months. The majority of the Commission has concurred in that additional amplification to move this as a high priority rulemaking.

Senator BOXER. Thank you very much. That is encouraging.

Mr. Chairman, would you send me a letter, would you respond to questions I have about two other recommendations? One is recommending that reactors have technologies that would prevent the sort of hydrogen explosions that we saw in Japan, and the other has to do with—and this is very important to my State—rec-

commend that every 10 years nuclear reactor safety standards should incorporate any new information on the strengths of earthquakes, tsunamis, hurricanes, or other natural disasters.

So if you could let me know your view, and please confer with the others to make sure you adequately represent theirs.

Mr. JACZKO. Absolutely.

Senator BOXER. Chairman, a non-partisan, non-profit organization called the Partnership for Public Service conducts an annual survey of more than 250,000 employees to rank the best places to work in the Federal Government. In the last 2 years, the NRC's employees have ranked the Commission as No. 1 or No. 2. You must be very pleased. It doesn't seem to indicate that you are the kind of person that runs around terrorizing people. Could you respond to how you felt when you felt you were rated that way?

Mr. JACZKO. Well, I was very pleased. I think that is a strong statement from the staff of the agency that they have confidence in the leadership and confidence in the organization itself. And they have confidence in themselves. I think there is a very strong statement in support.

Senator BOXER. OK. And Mr. Chairman, you have been attacked mightily from a lot of people from this dais about your character, your leadership, in a way that I think is wrong, harsh, and that is a nice way of saying what I think about it. I think it is wrong. And I want to quote from a conversation that you had with the NRC staff regarding your expectations concerning their view on the Task Force recommendations. This is what you said: "I welcome your non-concurrences. I am not telling you to non-concur, I am not telling you to think any different than what you think. I welcome what you think. But there just needs to be a reason, and you need to be able to articulate it. Because this Task Force deserves to know that, I deserve to know that, the Commission deserves to know that, the American people deserve to know that." And you said, "Does everybody understand that?"

And I put this out there, because these are your words. This is what you told your staff. And it is what I would hope most leaders would do, which is to say to the staff, as a lot of us do, I hope, and I believe we do, tell us the truth, tell us what you think. We might not want to hear it, and we are going to get upset, but I need to know from you.

And is that what your style of leadership has continually been, to tell people to tell you the truth, but to know that they have to back it up with facts?

Mr. JACZKO. That is the way I like to lead. And I do challenge people to defend and support their views. I think that makes us stronger, it makes us better to understand. I can appreciate how sometimes people may find that challenging sometimes, and difficult. If I ever do that in a way that causes somebody to feel uncomfortable, I always want to know and would immediately address that and correct it.

I think we have very good staff at the agency. But I think what we deal with is a very important subject matter. And it is important to get to the bottom of issues and to pursue them to their fullest.

Senator BOXER. I agree, because as I said, I think the future of nuclear power is at stake, when I look at my own State and the angst of the people who live near those nuclear plants. They are very worried. And they will be a lot less worried, Commissioners, if you really step up to the plate on these recommendations. And if you don't step up to the plate, and it is slow walked for any reason, if I insult anybody, I don't mean to, but if it is slow walked, they are going to take matters into their hands, and they are going to take the ultimate protection, which is, you know what, we are done with these old plants. And people don't want that to happen.

So it is really a lot of responsibility you have, not only to protect the people, but for the future of this industry.

Senator.

Senator INHOFE. Thank you, Madam Chairman.

It is my intention to stay here for the entire hearing, however, I will be participating in a colloquy on the Senate Armed Services Committee with the Chairman and will have to leave for a short while, if called.

Let me just say, Chairman Jaczko, that when you were first talked about and discussed in this position, I was at a deluge of people coming to me and saying he should not, you should not be in this position, because you are bringing your agenda in. And I remember talking to you about that at confirmation hearings, right here and in my office, privately. And I became convinced that they were wrong. And now I am convinced that they were right, and I was wrong.

Now, I am going to ask you a series of questions, and I can do it in the time that I have, they are only yes or no questions. I don't want any long elaboration on this, because these are very specific. And when you hear them, you will understand.

First of all, in your letter to Mr. Daley—we are talking about the White House, you wrote, “As Chairman of our collegial body, I take responsibility for improving the level of our dialogue.” Is that true, yes or no?

Mr. JACZKO. Yes.

Senator INHOFE. The NRC's Office of Public Affairs, that is the OPA, reports directly to you. This came with the reorganization that we have talked about from up here. So they report directly to you, is that correct?

Mr. JACZKO. Correct.

Senator INHOFE. So Eliot Brenner, the Director of that office, reports directly to you?

Mr. JACZKO. Correct.

Senator INHOFE. Here is what the NRC Web site says about the OPA. It says, the OPA, that is the Office of Public Affairs, manages and directs the agency's public affairs program, providing advice to agency officials and developing key strategies that contribute to increasing public confidence. This includes keeping top management informed of public interest in and news coverage of NRC's regulatory activities, as well as providing timely, clear, and accurate information on NRC activities to the public and the media through news releases, fact sheets, brochures, interviews, Web postings, and videos.

Now, I say this because I think we can all agree that is what is supposed to be happening. And yet, some of you may be aware that last Friday evening, Representative Markey, who I guess was your boss at one time, released a report entitled, and I will read the title of it, Regulatory Meltdown: How Four Nuclear Regulatory Commissioners Conspired—and that is you four—Conspired to Delay and Weaken Nuclear Reactor Safety in the Wake of Fukushima. Representative Markey, your former boss, said in a statement about the report, this is in this report, “The actions of these four Commissioners since the Fukushima nuclear disaster has caused a regulatory meltdown that has left America’s nuclear fleet and the general public at risk. Instead of doing what they have been sworn to do, these four Commissioners have attempted a coup on the Chairman and have abdicated their responsibility to the American public to assure the safety of America’s nuclear energy.” That is in this report.

I have an e-mail here, and I am going to ask that it be made a part of the record—

Senator BOXER. Without objection.

Senator INHOFE [continuing]. An e-mail that was sent by Eliot Brenner, the Director of Public Affairs at the NRC, to a reporter. Now, since that, my staff has contacted other reporters. Three others have confirmed this. I have to conclude that all reporters were contacted by Eliot Brenner to receive similar information on this e-mail. And I would like to have a redacted version of this inserted into the record, which I have already done. I will read a portion of this e-mail.

Now, this is Eliot Brenner talking to reporters. “As we approach the Wednesday hearing,” that is the hearing yesterday, “it would be a useful exercise,” reporters, “to read two things: the 1980 reorganization plan, with an emphasis on the roles and responsibilities of the Commissioners and the Director and the Chairman, and also the Markey report. I got deep into the Markey thing and found it quite interesting.” This was instructions to the reporters covering yesterday’s meetings to read this report up here, which was about the four Commissioners.

I would say, Chairman Jaczko, do you believe Representative Markey’s report is an accurate characterization of the NRC’s activities? Do you believe that?

Mr. JACZKO. Well, I certainly think it is based on e-mails from my colleagues, and I was deeply disturbed when I saw the content of many of those e-mails.

Senator INHOFE. Do you believe that this increases public confidence?

Mr. JACZKO. No, I don’t, and I think it is unfortunate that some of the communications that were going on with my colleagues, unbeknownst to me, were happening.

Senator INHOFE. Well, you have answered the question, it does not increase public confidence. No, it doesn’t, I agree with you on that.

I can’t tell you how stunned and appalled I am, and I will use the same characterizations, I suppose, as the Chairman, although I am on the other side of this. The idea that an official spokesman for the agency would encourage the media to read a report that is

clearly designed to denigrate four Commissioners, to attack the agency's credibility, and to undermine public confidence, I think it is reprehensible. I have to echo some of the statements that were made by my colleagues who have served on this Committee. I have never seen anything like that, on this Committee or any other.

Chairman Jaczko, when you committed to Mr. Daley to improve the level of dialogue with your colleagues, did he know you were going to use your authority as the agency's official spokesman to encourage media interest in a report that denigrates and personally attacks your colleagues?

Mr. JACZKO. I never discussed these with Mr. Daley.

Senator INHOFE. Oh, you didn't talk about this report? Were you aware that this report was being made by Mr. Markey?

Mr. JACZKO. I was aware that he had requested e-mails from my colleagues, and I saw the report after it was completed.

Senator INHOFE. So you were a part of that, then?

Mr. JACZKO. No. I was not a part of that.

Senator INHOFE. Oh, you weren't? He didn't ask you any questions?

Mr. JACZKO. The only questions that were asked of my staff or myself had to do with e-mails that I had provided.

Senator INHOFE. That is fine. You were aware of the report and the content of the report.

Now, in your letter to Mr. Daley, you wrote, "I continue to be unbelievably proud of the NRC staff and their single-minded focus on the agency's mission." These staff that you are so proud of, are they the same ones that Representative Markey attacked, saying they conspired with the four Commissioners to delay the release of and alter the NRC Near-Term Task Force report on Fukushima?

Mr. JACZKO. I am not going to comment.

Senator INHOFE. Well, these are senior staff.

Mr. JACZKO. It is Congressman Markey's report, and it is really probably more appropriate to ask him about his statements.

Senator INHOFE. Now, some of your supporters may say, well, it is not illegal, and they may be correct. A lot of things are not illegal, but it is still not right. And I think you owe an apology to your colleagues and the 4,000 men and women at the NRC.

Now, in your letter to Mr. Daley you wrote, "I assure you that I come to work every day to do my job better than the day before." Let me suggest to you, sir, that you reached a depth on Saturday, December 10th, that no NRC Chairman has ever reached during my time on this Committee. I think when you read the report, and you see that the person who answers to you, Mr. Chairman, is the one who is responsible for sending out the statement from this Committee, and it is one where he is saying, you need to read this report by Representative Markey who is targeting these four Commissioners on each side of you, that it is just totally unreasonable that this could be happening.

The fact that he reports directly to you brings you into it, and I hold you just as responsible as I hold Mr. Brenner.

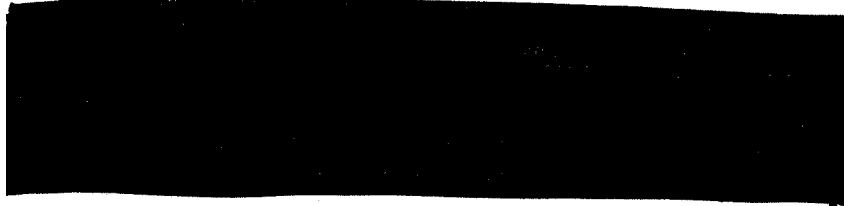
Thank you, Madam Chairman.

[The referenced information follows:]

----- Original Message -----

Subject: [REDACTED]
Date: Sat, 10 Dec 2011 [REDACTED]
From: Brenner, Eliot <Eliot.Brenner@nrc.gov>
To: [REDACTED]

These are the documents I have been sharing and I wanted to be sure you had them. As we approach the Wednesday hearing, it would be a useful exercise to read two things: the 1980 reorganization plan with an emphasis on the roles and responsibilities of commissioners v a chairman and also the Markey report. I got deep into the Markey thing and found it quite interesting.



Eliot

From: Pace, Patti
Sent: Friday, December 09, 2011 5:51 PM
To: Batkin, Joshua; Brenner, Eliot
Subject: Materials

Senator BOXER. Senator Carper.

Senator CARPER. Thank you, Madam Chair.

Mr. Chairman, Chairman Jaczko, in your testimony you mentioned that the Commission has agreed to move forward on, I think seven recommendations, maybe fewer, maybe you said five. Could you just give us a time line of when you believe those recommendations will be implemented by staff and completed by the Commission?

Mr. JACZKO. It is not clear at this point, the staff has not fully developed time lines for completion. The last information I received was that for the orders on some of those near-term wouldn't probably be done until May or June. I indicated to the staff that that was unacceptable, that was too much time and we need to figure out how to accelerate that time table.

Some of the letters that are so-called referred to as 50-50 4(f) letters which are essentially requests for information would likely be done a little bit sooner. But I think we have taken probably too long to get to the point where we can actually get down and start having the staff do their work to really engage directly with the licensees. I would have hoped that we are farther along at this point, but we are where we are.

Senator CARPER. Just to follow up, I believe the Commission has stated that it hoped to complete and implement all the lessons learned from the Fukushima accident within 5 years. I think that would be by 2016. Based on the progress so far, do you think the NRC is likely to meet that goal?

Mr. JACZKO. I think it is difficult to say. I think at this point, we haven't really laid out a really clear enough path, I think, to get to those 5 years. So certainly given that everybody has expressed an interest in doing it, I am hopeful that we will be able to accomplish it. But I am not sure that I see a plan yet that will get us there in 5 years.

Senator CARPER. If I could, Commissioner Svinicki, do you agree with those time lines? Do you believe that the NRC will meet them?

Ms. SVINICKI. I agree with Chairman Jaczko that there are not the detailed time lines yet. With that you could have a better degree of assessing whether or not it could be done within 5 years. But I still think that it is a reasonable target.

Senator CARPER. All right, thank you.

Some of my colleagues, maybe even the Commission in the course of this questioning and testimony have alluded to, talked about the powers of the Chairman. And the powers of the Chairman I think were found to be, after the Three Mile Island accident, were found to be not clearly delineated. There are some who felt that the Chair, while the Chair would be the first among equals, but that the powers of the Chair were not as clearly delineated as they should have been.

My understanding of history is because of that belief, after the Three Mile Island accident the Chairman was granted, I think by the urging of President Carter, was granted powers for emergencies and for day to day authorities. And not every Chairman has elected to fully use those powers. My understanding is that Chairman

Jaczko has decided to use those powers, where others have chosen not to.

I think back on the times in my own life, maybe other colleagues here can as well, when we had the authority, when I was Governor, when I was a naval officer, we had the authority to do a certain thing and chose to do something just a little differently because of the interest in building a team, cooperation, and civility. I would just ask that as you go forward that you keep that in mind, Mr. Chairman.

The other thing I want to say is a question. A colleague of ours, Blanche Lincoln, whom Senator Boozman succeeds, a dearly beloved colleague from Arkansas, said during her re-election campaign last year, she used to say—I am sure the Chair remembers this—she used to say, what doesn't kill you makes you stronger. And I can't imagine that you are going through right now, yesterday or today, is something that you will remember fondly. But it is not going to kill you. It may make you stronger.

My question is, will it make you a better leader? Will it make you a better chair? If so, how?

Mr. JACZKO. Well, as I indicated yesterday, some of these things that are a concern of my colleagues I found out about yesterday. And I have offered to reach out and talk to them and for us to meet as a group to discuss these issues and better understand where my interpretation of the statute or where any of my actions have been, caused concern on their part. I think if they are willing to engage in that dialogue, I think that will invariably make—it will make the Commission stronger, which I think in the end my leadership is defined by how well the Commission functions.

But I will say that I, in the end, I am committed to safety. I would always prefer a Commission in which we all agree, in which there are no conflicts and there are no disagreements. I don't think that is realistic, and I think where we have to continue to work is to figure out a way to disagree without their being personal accusations or things of that nature.

Senator CARPER. OK. Let me conclude if I can, then. In about less than an hour, the Chaplain of the Senate, Barry Black, will convene a Bible study group. He does this every Thursday at around 12:30 or so. And it is something that maybe seven or eight of those of us who need the most help show up. And he reminds us almost every week, as leaders in this country, that we are supposed to be humble, that we should practice and act as remembering and trying to challenge us with humility. He reminds us that we are servants, we are not to be served, we are servants, and we need to keep that in mind.

And most of all, he reminds us to treat others the way we want to be treated. He describes the Golden Rule as the Cliff Notes of the New Testament. That is good advice for everybody on this side of the dais, and it is certainly good advice for the people who are sitting at this table, every one of you and particularly the Chairman. I would ask that you take that to heart as we try to every week. Thank you.

Senator BOXER. Thank you, Senator.

We will turn now, as I am looking at this chart here, to Senator Alexander.

Senator ALEXANDER. Thanks, Madam Chairman.

Mr. Chairman, do you believe the 104 civilian nuclear reactors in the United States are operating safely?

Mr. JACZKO. Well, we have varying degrees, I think, of operation. Just a day or so ago the staff did indicate, we placed one of our plants in what is called manual chapter 0350, which is a very strong statement by the agency that we have real concerns about the safe operation of that facility. It is currently not operating, it is shut down.

So with the exception of that facility, all the plants are otherwise operating safely, with varying levels, I think, of successful performance.

Senator ALEXANDER. Thank you. And that includes the 23 boiling water reactors that are like the reactor that was in Fukushima?

Mr. JACZKO. Right now, again, we have, all of those plants are generally operating within our safe levels.

Senator ALEXANDER. Trying to understand the discussion about recommendations, do you agree that some of the recommendations are different from others, and there ought to be a priority in addressing them?

Mr. JACZKO. Well, the way I look at priorities is I try and step back and figure out constraints. Because you prioritize in a situation where you have constraints.

Senator ALEXANDER. Well, I am just asking, is it appropriate to put some ahead of others?

Mr. JACZKO. If there are resource constraints, yes, I think in principle we would act on all of these immediately and with the same level of dispatch.

Senator ALEXANDER. By acting, you don't mean complete your work on them, you mean set up a process to deal with them? Is that correct?

Mr. JACZKO. Well, no, I think by acting on them I mean getting us to the point where plants are making modifications.

Senator ALEXANDER. Mr. Apostolakis said Recommendation No. 1 was technical and complex and would take a good deal of time to complete. Is he wrong about that?

Mr. JACZKO. I don't agree that that one will. It is more of a philosophical description about what we do with those events that are considered beyond design basis events. I think what the Task Force was really saying is that over the years, we have dealt with those types of events in our regulatory framework. We have just never given them a label. And to some extent, they were saying we should give that a label and call these so-called extended beyond design basis events. This is something many other of our regulatory counterparts in other countries do. It is not really that novel of a concept. I think it is something that we can move forward on.

But from a practical standpoint, it is not necessarily changing any of the decisions at the plants.

Senator ALEXANDER. According to United States Code 5841, it says, "Each member of the Commission shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information." Can you think—have you provided each member of the Commission full access to all information?

Mr. JACZKO. Absolutely. And I would note, Senator, that that is from the 74, I believe from the 74 energy—

Senator ALEXANDER. It is still the law, though, right?

Mr. JACZKO. Correct, but there was an Energy Reorganization Act.

Senator ALEXANDER. No, but it didn't change that law, did it?

Mr. JACZKO. It did change that provision, Senator. It changed the information provision statute.

Senator ALEXANDER. Mr. Chairman, I will follow that up with you. If you are right, I will accept your point. I think you are wrong.

Mr. JACZKO. We have our general counsel here, too. He may be helpful in that.

Senator ALEXANDER. How about the testimony in 1980 that the Chairman may not withhold or delay providing information requested by the Commission, individual members shall also have full access to information? Is that still—

Mr. JACZKO. Correct, and I would note, and I think probably where there is the need for continued dialogue is, the end of that provision states for ensuring that the Commission is fully and currently informed about matters within its functions. So that is, I think, where the tension exists at the Commission. Clearly, all information can't be provided to the Commission. I mean, I don't get access to all information within the agency. So what I have tried to do, which was one of the recommendations of the Inspector General in 1999, was to institute a more rigorous agenda planning process.

Senator ALEXANDER. I am going to save 30 seconds here for myself, if I may, so I don't go over my time. I thought Senator Carper's advice was pretty good about leadership. I have made some mistakes in my life, many times, and sometimes I have gone to the office of my Senate colleagues where I thought they have been unreasonable. And I have listened to them, and I have found in some cases I might have been. At least it provided a way to move forward.

It is an extraordinary event when four members of the Commission, three appointed by the current President, say that they are not able to do their jobs because of the way you are doing your job. And Madam Chairman, I would hope you would reconsider your thought that this Committee, whose job is oversight, should not keep an eye on this. Senator Carper is a fair minded individual, and I would think that it is our responsibility to watch this, but your responsibility to straighten it out. And I think that starts with the Chairman, and I hope that happens.

Senator BOXER. Well, since you asked me, what I said was, we are not going to have witch hunt. What I said was, we are going to absolutely continue this. I am going to have hearings every 3 months and bring the Commissioners back so we can keep track of this. Because when we hear from the Chairman, and I didn't hear anybody else dissent, that we are not on track to get these recommendations done, and that is the senior staff at the NRC, 135 years of experience, we are not on track to do this in 5 years, and that is a problem. So absolutely, we will have hearing and people can ask whatever questions they want.

But I am not going to be holding a hearing like Chairman Issa did to delve into personnel matters and to delve into character assassination of anybody. Because I don't think that is appropriate at all.

Senator ALEXANDER. I don't think anyone on this Committee has suggested that we would like to participate in that, Madam Chairman.

Senator BOXER. Well, that is good. I am glad. Then we are all in agreement. It is all going to be good.

Senator Sanders.

Senator SANDERS. Thank you, Madam Chair.

Let me begin by commenting on something. Senator Inhofe spent a bit of time criticizing an employee of the NRC for suggesting that reporters read a report published by Congressman Markey, a veteran member of the House and certainly in my view, one of the environmental leaders of the Congress. I would suggest that there is probably no member of this Committee, or no member of the U.S. Congress, who himself or herself or a staff member has not suggested to reporters to read something, a document coming from the U.S. Congress.

Now, Senator Inhofe may not like that report. He is entitled to his opinion. But to criticize somebody working for the agency to say, read something published by a member of the U.S. Congress, that doesn't make a whole lot of sense to me.

Senator INHOFE. Let me respond, since he mentioned my name.

Senator BOXER. All right, let's freeze the time. Yes.

Senator INHOFE. The statement that I read, and listen carefully, I ask my good friend, this is what the Markey report said, and this is what the employees that you referred to asked the reporters to read before yesterday's Commission. He said, the actions of these four Commissioners since the Fukushima nuclear disaster has caused a regulatory meltdown that has left America's nuclear fleet and general public at risk. Instead of doing what they have been sworn to do, talking about these four, these four Commissioners have attempted a coup on the Chairman and have abdicated their responsibility to the American public to assure the safety of American's nuclear power.

I am not going to ask you if you think that is appropriate, I don't think there is anyone who would think that is an appropriate thing for them to go to the media to try to have them believe something before a hearing takes place.

Senator SANDERS. In all due respect—

Senator BOXER. Go ahead, Senator.

Senator SANDERS. Senator Inhofe, I think you and your staff have asked reporters to look at some situations, information on global warming that many of us think are beyond comprehension. You are entitled to your views. Ed Markey is entitled to his views. You may disagree with them, you have every right in the world to disagree with them.

All I am saying is, I don't see anything outrageous or wrong with somebody saying, here is a report published by a member of the U.S. Congress. I understand you don't agree with it, maybe I agree with it, I don't—I don't know, I haven't ready it. But I don't think that is a subject for much criticism.

Let me get back to, if I might, Madam Chair, just where I wanted to go. I want to get back to the point here that I think underneath a lot of what we are hearing today is philosophical disagreements about the role of the NRC in terms of nuclear safety. And I do not criticize the integrity or the honesty of anyone. People are entitled to have different points of view on this Committee. Senator Sessions and I are old friends, we like each other. We disagree, correct? Doesn't mean to say I don't think he is a decent and good person.

But let me get back to—let me ask Chairman Jaczko a question. As I understand it, please correct me if I am wrong, there are 48 reactors in this country who still do not comply with fire safety rules established in 1980 and amended in 2004 to ensure that fires do not threaten backup power systems that could prevent a meltdown in an emergency. This year, as I understand it, four Commissioners voted to approve a delay for compliance until 2014. You, Mr. Chairman, did not. Can you tell us why you did not and where your differences of opinion are with the other four members?

Mr. JACZKO. I think the big difference was really in whether or not we should ignore enforcement process for those plants that were not moving forward with the new provisions. I felt that after all of these years, if plants weren't going to move to our new regulatory system, they should be subject to having their violations counted in our enforcement process. If they had areas in which their fire protection programs weren't meeting our standards, those needed to be processed through our normal enforcement. I felt that that would be a strong way to encourage plants to ultimately get to complying with this new regulation.

The other area where I think there was strong disagreement is, I believe at this point that this new regulatory structure or program which is I think much better for safety should be mandatory, that we really shouldn't be in the business of giving licensees the option of pursuing a new regulation. It really should be mandatory and something that they have to comply with. That way, I think we would actually get to the business of adopting these requirements.

Senator SANDERS. Let me ask you another question. After the tragedy at Fukushima, as I understand it, senior NRC staff made 12 recommendations for improving the safety of nuclear power plants in the United States. As I understand it, you asked your colleagues to make a final decision about what changes the NRC should make so that action could be taken. As I understand it, a majority of the Commission instead asked for the staff to provide even more information, some of which could take years to develop before making any decisions. Why did you vote one way and a majority vote another way on that issue?

Mr. JACZKO. Well, I think, again, I can't why the others did. I felt that I had enough information at that point to endorse the recommendations. I also provided the Commission a plan for how we could solicit additional stakeholder input before we made a final decision and how we could solicit additional input from the staff, as well as from our Advisory Committee on Reactor Safeguards. And the plan was designed to get us all of that information, so that we could make a final decision in 90 days.

But I felt a responsibility, having helped establish that Task Force with the Commission's concurrence, I felt a responsibility to support their recommendations. They worked very hard, their recommendations have withstood all the other reviews and demonstrated that they were a solid set of recommendations. So I was comfortable taking that, I thought it was a statement of my leadership of the agency to endorse those recommendations at that time.

Senator SANDERS. All right.

Madam Chair, thank you very much.

Senator BOXER. I thank you, Senator.

We now turn to Senator Sessions.

Senator SESSIONS. Thank you, and Senator Carper, thank you for your wise advice to all of us.

Let me ask this. Former Chairman Meserve, when he declared emergency powers after 9/11, declared it openly that he was doing so. He did so in consultation with his fellow Commissioners, and he assigned his fellow Commissioners specific duties and tasks so they were fully involved in all aspects of this.

Commissioner Ostendorff, you have a distinguished military record. Would it be fair to say that, I think it would be fair to say, you know a thing or two about crisis management. Were you aware and did the Chairman make any formal announcement that emergency powers had been exercised when he was doing so?

Mr. OSTENDORFF. Senator Sessions, I along with other Commissioners did receive, and I think Chairman Jaczko's comments about providing briefings to Commissioners early on, I agree with the Chairman's characterization. We were receiving briefings, and I think the information flow as to what was happening in Japan was appropriate.

That said, I did not think that we had the clarity of whether or not there had been an emergency power declaration. I did discuss this in a one on one meeting with Chairman Jaczko March 31st and expressed some concerns that there is a lack of clarity here.

Senator SESSIONS. As a military person, when somebody assumes command of a situation, altering the normal chain of command, that should be crystal clear, should it not?

Mr. OSTENDORFF. From my experience, yes, sir.

Senator SESSIONS. Chairman Jaczko, do you believe that under the Reorganization Act of 1980 the Chairman is allowed to withhold or delay providing information requested by other members?

Mr. JACZKO. There is certain information that in particular, the question has been on budget information, that as the Chairman formulates and develops that information that that is not provided to the Commission. That has been established in our Commission procedures. So there are areas in which there is information that is not provided to the Commission. If there is ever an area of doubt, the Commission has the opportunity to, as a voting matter, to specifically state that they wish to get the information, and the information is provided.

Senator SESSIONS. Well, the statute—I believe Senator Alexander is correct—is still in effect. I hope you understand that. And it says each member, including the Chairman, shall have equal responsibility and authority in all decisions, and shall have full access to all information. Do you agree with that, or do you think you are

not bound by that, the Chairman can decide what he wants to reveal to the other members and screen information going to the other members?

Mr. JACZKO. As I said, the 1980 Reorganization Act indicates that the Commission is to be kept currently and fully informed about information within its functions. So there is some information within the Commission, within the agency, that was not within a function of the Commission. And that information is not routinely provided to the Commission.

Senator SESSIONS. Well, I don't agree. I believe you are misinterpreting the plain statute. I don't know why you would deny equal voting members any budget information. Are there any other information or data that you think you have a right to deny the other members?

Mr. JACZKO. Senator, if I could just add that, certainly, when it comes to voting matters, I am always providing information to the Commission. As my colleagues have stated now I think twice in front of congressional hearings, they have had all the information they have needed in order to carry out their voting responsibilities. So where I think again there are some areas where we can continue to work and better understand the situation is in those areas that are not routinely within the functions of the Commission. And providing that information has sometimes been an area of dispute and disagreement. And that is where I want to continue to better have a dialogue.

Senator SESSIONS. Well, I think the problem with the dispute is that you don't acknowledge you have a full duty to immediately respond to the inquiries of your Commissioners and share with them any information you have on any matter related to the Commission. And if you don't acknowledge that, then I think we have a real problem. I don't believe it is a personality problem.

I believe it is a question about management according to the law of the United States. Isn't it true that the Inspector General on June 6th in his report found that you control information, that you act as a gatekeeper for information that goes to the Commissioners?

Mr. JACZKO. I do not believe the Inspector General made that as a finding. I believe the Inspector General indicated that staff had made those comments. But it was not a specific finding, I believe, of the Inspector General. I would have to check to the record, though. I can get back to you on that.

Senator SESSIONS. Let me just ask the other members of the Commission. Do they have concerns that the Chairman—

Senator BOXER. Time is out. We will have another round of questions.

We move along to Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman.

I want to ask the Chairman—

Senator BOXER. Chairman Jaczko, you can correct the record, if you wish, after Senator Lautenberg finishes.

Mr. JACZKO. I apologize.

Senator LAUTENBERG. I just didn't want anything to be not heard or misunderstood. You faced some criticism for pushing the Commission to act so quickly to make and implement recommendations

for improving nuclear safety in the wake of the Fukushima disaster. Why were you so insistent that the NRC move quickly on these recommendations, being challenged and cloaked in what I think is a little bit indirect language? Was it too hasty?

Mr. JACZKO. Well, I didn't think it was too hasty. We had asked the Task Force to complete their work within 90 days. And the bulk of the work was done then, because of the report that they issued. It was a very thorough and very readable report, had done a tremendous amount of research and investigation to get to the conclusion. So I thought it was reasonable that the Commission could review that information and respond to it within about the same amount of time, in 90 days.

Senator LAUTENBERG. Because I am reading from the Markey report, from the committee report that says the four Commissioners attempted to delay and otherwise impede the creation of the NRC Near-Term Task Force. They conspired with—it goes on to make an accusation here that, I give it to you without my confirmation—that is, conspired with each other and other senior NRC staff to delay the release of or after the NRC Near-Term Task Force report on Fukushima. So this policy difference, can you imagine why it is that they thought that more time could be employed and not rush this thing along? But then you wanted the Commissioners—Mr. Magwood, do you want to respond to that?

Mr. MAGWOOD. Certainly, thank you, Senator. As I recall, there was never really any discussion about delaying the formation of the Task Force. I think we were all very supportive of it, and it happened very quickly. Regarding the issuance of the Near-Term Task Force report, the only discussion that I ever recall about delaying it was to provide a couple of days for the Commission to actually read the report before it went public. Because obviously we were going to be approached with questions.

So the only conversation I ever had with any other Commissioner was whether it made sense to release the report the day it became available, versus giving us a couple of days to read it, so we would understand it.

Senator LAUTENBERG. So is that where the, one of the most serious criticisms lay, and that is that is there is a couple of days difference? Do you think that the Chairman was hasty in moving to get the report done?

Mr. MAGWOOD. No, of course not. No.

Senator LAUTENBERG. Because it is characterized as a blemish, and I don't really understand why that is.

Mr. MAGWOOD. I didn't understand that, either.

Senator LAUTENBERG. While I am chatting with you, Commissioner Magwood, when you were nominated to the NRC, more than 100 environmental groups wrote a letter opposing your appointment, saying Mr. Magwood's background, experience, and apparently key interests are in the realm of nuclear power's promotion, not its regulation to protect the public health, safety, and the environment. And when you were being sworn in, the NRC report says that, makes note of the fact that you have a distinguished career in the nuclear field, public service. But it does also point out that you served 4 years as its associate director, the Office of Nuclear Energy, the associate director for technology and programs. It is a

fairly high comfort level with the industry, and I just wonder whether they were of help to you in trying to move schedules along and things of that nature.

Mr. MAGWOOD. No, actually my role at DOE was principally associated with advanced research, advanced technology. So I actually spent most of my time working with national laboratories, universities. We obviously had some programs that engaged with the industry. But it really wasn't the principal area of work that we had. We had one very important program, Nuclear Power 2010, but outside of that, my industry interactions were actually pretty limited. We worked really close with international partners on advanced technology, research cooperation.

Senator BOXER. Sorry, Senator. We are going to have another round, but we have to move. I am so sorry to interrupt both my friends on either side of the aisle, but we just need to move.

Senator Barrasso.

Senator BARRASSO. Thank you, Madam Chairman.

Today, New York Times, Leader of Nuclear Agency Hears Litany of Objections; Washington Post, Fellow NRC Members Accuse Chairman of Bullying Tactics; Madam Chairman, I would like to introduce both of those.

Senator BOXER. Sure.

[The referenced information was not received at time of print.]

Senator BARRASSO. Thank you.

The New York Times article, first paragraph, "In exchanges that ranged from merely testy to caustic, four members of the Nuclear Regulatory Commission told a House Committee on Wednesday that their Chairman had withheld information from them, berated the agency's professional staff, reduced female employees to tears with abusive comments, and created a chilled atmosphere that was hurting the agency's ability to function."

So I ask the Chairman, in the hearing yesterday, Commissioner Magwood alluded to three career women at the NRC who "were brought to tears" and who felt humiliated by your actions. I think these are the same incidents that Commissioner Svinicki called outbursts of rage by you. The Democrat Ranking Member Cummings of that Committee yesterday said that he was concerned as a father of two daughters about hearing about these incidents. His exact words were "It concerns me." He asked you whether the allegations were true. I don't think that your answers were clear.

Well, I have two daughters, and I want to know also. Are these allegations true? Yes or no.

Mr. JACZKO. No. I was shocked, and I was, I have to say mortified, to hear those statements. I have a wife, I have a sister who had a daughter just about 12 days ago. And I have interacted and worked with a tremendous number of people at the agency, including a large number of women. And I have never intentionally berated, threatened, bullied, or intimidated any member of the staff.

I can at times, as I have said, be passionate, be intense in my questioning. And if that has ever, ever led to an emotional reaction by somebody, I would want to know that, and I would address it immediately.

Senator BARRASSO. Thank you.

Commissioner Magwood, at yesterday's hearing you spoke about a growing cancer of a chilled work environment because of the Chairman. You talked about verbal abuse, screaming, pointed language toward women by the Chairman. The White House is recommending that a third party mediator should try to work things out between the Commission and the Chairman.

Based on your long experience, is that the type of solution that the private sector would do to respond to charges of harassment and a hostile work environment? Meaning, shall we bring the accuser and the accused together and say, work it out?

Mr. MAGWOOD. I think in the private sector, likely not. But this isn't the private sector, so I recognize that the solution space is more complex. And I should say, though, whatever happens going forward it is my determination that I will continue to serve my role as a Commissioner the best I can under the circumstances.

Senator BARRASSO. Thank you.

Mr. Chairman, yesterday Congressman Chaffetz of Utah asked a simple question, whether you did anything wrong. I think Congressman Labrador asked the same question. I didn't feel that there was really a clear answer to those. That is a simple question. Are any of the charges made against you from the four other Commissioner or from the NRC staff true?

Mr. JACZKO. Well, my experience has been that there is not a chilled work environment. I interact with staff on a daily basis, they tell me their views frankly and candidly. So I have not seen a situation in which people are afraid to raise their views with me.

As I said, I can be passionate, I can be intense. I am committed to the safety job that I have. And if that has ever been misconstrued or misinterpreted, I want to know that immediately, so that I can address it and assure people that it is simply not the case.

But I would note that I have had for 2 and a half years the same core group of senior managers. I have had over 15 or more staff working in my personal office, 10 of whom at this time are women. None of them has ever expressed any concern to me, and I think they very much enjoy working for me.

Senator BARRASSO. Just to all the other Commissioners, I think Commissioner Ostendorff, yesterday you testified you believe you had fulfilled your oath of office by signing a letter to the White House expressing your serious concerns about the chilled work environment at the NRC. To the Commissioners, did all of you believe that you signed the letter to the White House agreeing at the time you were fulfilling your oath of office to the American people by signing the letter?

Mr. OSTENDORFF. Yes, sir.

Senator BARRASSO. Thank you. Commissioner.

Mr. MAGWOOD. Yes.

Senator BARRASSO. Commissioner.

Ms. SVINICKI. Yes, Senator.

Senator BARRASSO. Commissioner.

Mr. APOSTOLAKIS. Yes.

Senator BARRASSO. Thank you. I agree. Thank you for fulfilling your oath of office.

Senator BOXER. Thank you very much, Senator.

We will now turn to Senator Sanders. Oh, I am so sorry. Senator Udall.

Senator Sanders, you will be the next Democrat. I will waive my time.

Senator UDALL. Thank you, Chairman Boxer.

The New York Times article that was just read talked about withholding information. Has the Commission received all the necessary information to implement the Task Force recommendations? And if not, what additional information is needed? It seems to me there is a simple answer to that. Maybe I will just start here. Have you received all the necessary information that you have needed in order to act upon these Task Force recommendations?

Mr. MAGWOOD. Yes, I believe so.

Ms. SVINICKI. Yes, Senator.

Mr. APOSTOLAKIS. Yes.

Mr. OSTENDORFF. Yes, with one exception. And this was noticed in our letter to the White House, that the original SECY paper 110093 presented to the Commission on July 12th of 2011 did not contain the detailed staff recommendations that were originally part of the staff recommendations as to how to proceed.

Senator UDALL. Have you received those now?

Mr. OSTENDORFF. We received those, there were a number of different versions of these. That paper was sent to the Commission then withdrawn very shortly after that. Other than that particular piece, I do believe, Senator, I have received information I have needed for this report.

Senator UDALL. Thank you.

Mr. JACZKO. Senator, if I could just add.

Senator UDALL. Yes, Mr. Chairman, go ahead.

Mr. JACZKO. That is one of the areas that my colleagues have expressed concern about. I would note that there was a paper that was provided. It did not contain any specific recommendations, and moreover, in my discussions with senior staff, I felt actually it mischaracterized the position of the staff, because the entire staff had not yet been fully consulted about and sought and had their views sought about the recommendations.

So I felt it was not properly characterizing the situation. I actually notified all of my colleagues in person that I was going to have that paper withdrawn and replaced with just a straight cover memo transmitting the recommendations.

At that time, none of my colleagues expressed an objection to that course of action or expressed any concern about that course of action.

Senator UDALL. Thank you.

Chairman Jaczko, the NRC's Near-Term Task Force issued 12 recommendations for U.S. nuclear plant safety to be improved. And it is my understanding that the Commission has directed immediate implementation of 7 of the 12 Near-Term recommendations and did that on October 20th. When you look at the recommendations, they are very concrete things. I just pick out a few here: order plants to evaluate and upgrade the necessary seismic and flooding protection, strengthen station blackout mitigation, order reliable hardened vents in boiling water reactor facilities, enhance

the capabilities and instrumentation of spent fuel pools, which we know are a concern out there.

Have these recommendations been fully implemented? What has been done on the ground at this point? And mind you, everybody should know that March 11th was when the incident took place. We are approaching an anniversary here in a couple of months.

Mr. JACZKO. Well, we really haven't done much yet on the ground, from a direct regulatory perspective. The industry, to their credit, has begun to do some of those things on their own. At a meeting, actually, with one of our advisory committees just a few weeks ago, in fairly direct terms, in terms I had heard from a chairman of that advisory committee, he stated pretty much that we had spent the last 8 months doing a lot of talking and it was time to get down to doing some actual work. And I think that was a good wake-up call for the Commission, that we really need to get on with the business of getting these recommendations into the plants and getting changes made in the plants.

So I think we are at that point now, where we can begin that. But we still have some work to do to get there.

Senator UDALL. When do you think that will happen? What is your sense of the timing right now?

Mr. JACZKO. Well, as I said, the most near-term has to do with the series of orders and what the staff has told me at this point is that they were targeting for May or June. I have told them that they need to go back and re-think that and come up with a tighter timeframe. So I haven't heard yet what the result of that is. But I expect it to be sooner than May or June.

Senator UDALL. Thank you. Thank you very much.

Thank you, Madam Chair.

Senator BOXER. Thanks so much.

Senator VITTER.

Senator VITTER. Thank you, Madam Chair.

Mr. Chairman, I am very concerned, as I stated, about some, many, of these specific suggestions that have come up. And you had an exchange with my colleague, Senator Barrasso, a minute ago, and I want to revisit it. I am not asking about your intention. I am asking, did you ever have an exchange with staff that led to, that involved staff breaking down in tears?

Mr. JACZKO. Not in my presence, no.

Senator VITTER. OK. Did you have such an exchange that led to their breaking down in tears shortly thereafter outside of your presence?

Mr. JACZKO. I—I only learned of the possibility of these events in the last several days, prior to the hearing yesterday.

Senator VITTER. OK. So you have learned of that. And how many instances have you learned of?

Mr. JACZKO. Well, all I know is what has been stated by the Commissioners in the hearing. I have not had any staff come to me and specifically tell me that there has been a problem. I would welcome that, and if there had been—

Senator VITTER. Well, if they were driven to tears, you might understand why they may not approach you.

Does this learning of this information concern you?

Mr. JACZKO. Absolutely. As I said, if I have ever done anything to cause—

Senator VITTER. What are you going to do about those specific instances?

Mr. JACZKO. Well, I would be more than happy to, to discuss it with the individuals if they want and remedy in whatever way is appropriate. But again, I have not been—

Senator VITTER. What do you plan on doing in terms of your future behavior in light of these specific instances?

Mr. JACZKO. Well, I certainly would want to understand what in my approach led to that, and of course I would not take any kind of action that could lead to a reaction like that inappropriately.

Senator VITTER. OK. Let me ask the other four Commissioners, without naming names of staff, do you know of such instances?

Mr. OSTENDORFF. Senator, I had a—I am not going to name the individual, I am aware of three senior executive service females who have been yelled at by the Chairman and one of them has told me directly that she was utterly humiliated by that interaction.

Mr. APOSTOLAKIS. I have not had a personal experience of this happening.

Ms. SVINICKI. I am aware of these events.

Senator VITTER. Commissioner, how many events are you aware of?

Ms. SVINICKI. I am aware of three events.

Senator VITTER. Mr. Magwood.

Mr. MAGWOOD. As I discussed yesterday, certainly there are three of them, I have had personal contact with the women involved and talked with them about the incidents.

Senator VITTER. OK. Mr. Chairman, my guess is these women don't want to have a conversation with you, for obvious reasons. So in light of that, what are you prepared to do about this in terms of those events and maybe even more importantly in terms of future behavior?

Mr. JACZKO. Well, again, without knowing more specifics, I—it is hard for me, it is certainly something I would be happy to talk to my colleagues about, and they can perhaps give me some more specifics about what caused the, what caused the concern. And of course I will do whatever I need to do to address it.

Senator VITTER. And right now, you have no guess what caused this reaction?

Mr. JACZKO. You know, as I said, there are times in which I can question people intensely, and that is something that I am aware of in my style that—

Senator VITTER. Do you plan to change that style?

Mr. JACZKO. I work on it every day to do it and to do it better.

Senator VITTER. Let me ask the other four Commissioners, in terms of instances of not receiving requested information, can you outline any instances of where you requested certain information, budget, anything else, and didn't receive adequate information in your opinion?

Mr. OSTENDORFF. I have already mentioned the withdrawal of the SECY paper, and the Chairman appropriately acknowledged that I discussed that with him and he discussed it with his colleagues. I did not agree with how he handled that. I did not agree

with his characterization of the staff's viewpoints in that paper for SECY 110093. I have had concerns on provision of other information to the Commission with respect to a paper that came up in August that I do not believe recommended the staff's best recommendation as to how we should proceed with respect to alternative licensing periods for the Vogtle Nuclear Power Plant.

Senator VITTER. Any other Commissioners?

Mr. APOSTOLAKIS. I received a paper recently that I cannot name what it does, because it is in front of the Commission. But it had four options. And the recommendation was to go with Option D. And then I learned from the staff that the staff really thought and would have recommended Option B, but they were pressured to change that.

Senator VITTER. Can I just follow through on that?

Senator BOXER. No, I am holding everybody. There is another—I am holding everybody to their time.

Senator VITTER. I would like him to finish answering my previous question. That is the norm around here.

Senator BOXER. Well, excuse me. We changed it, and I have cut off Democratic Senators and Republican Senators because we are running out of time, the Commissioners and us. So we are going to move on. But there is going to be another round.

Senator VITTER. Madam Chair, that all happened after the question up was finished.

Senator BOXER. No, it isn't true. I cut off right in the middle of an answer, because we don't have the time. But we are going to have another 5 minutes apiece.

Senator VITTER. Well, we had better make the time for this. We had better make the time for this.

Senator BOXER. Senator, I will sit here as long as you want. I will sit here as long as you want. I am a fair person. We are going to have a second round. And I am giving up my slot to Senator Sanders. And I will take mine at the end.

Senator SANDERS. I am not comfortable with the direction in which this questioning is going, and I think the door was opened by Mr. Barrasso. I think we are asking Chairman Jaczko to comment on issues that he is not even aware of. We are into this beating of your wife business.

But the door has been opened. It was opened by Mr. Barrasso, the door was opened by Senator Vitter. So I am going to ask Mr. Magwood a question. I think Senator Barrasso quoted from the New York Times. Let me quote from Huffington Post, one of the larger online news publications in the country. And this is what the Huffington Post says on December 12th, 2011: "Bill Magwood, the man at the center of an effort to overthrow the Chairman of the Nuclear Regulatory Commission, and his most likely successor if the move is successful, served as a consultant for TEPCO, the Japanese company that owns the Fukushima Nuclear Power Plant, according to information provided by Magwood as part of his nomination and confirmation process, which is obtained by the Huffington Post."

Another comment in the Huffington Post piece, "When Magwood was nominated by President Obama in 2009 to become a Commissioner, nearly 100 environmental groups, along with the Project on

Government Oversight, urged his defeat in the Senate, arguing that he was too close to the industry to be tasked with regulating it.”

Further quotes, “Since joining the body, Magwood has coordinated with the two Republicans and the other Democrat on the panel to delay and water down new safety reforms pushed by Jaczko, according to the e-mails made public by Markey. Following the Fukushima disaster, Jaczko has made a major effort to increase safety standards, an effort that is being closely watched by international regulators and nuclear companies across the globe.”

Let me ask, and again, I am not comfortable in doing this, but I think after hearing Mr. Barrasso and Mr. Vitter, we have to ask some questions as well. And that is, Mr. Magwood, this article suggests that if for whatever reason Mr. Jaczko was forced from his job that you are ready to take it over. Are you prepared to tell us, as a member of the Commission, that is not the case? That if for whatever reason Mr. Jaczko left his job, that you would not take the position of Chairman of the NRC?

Mr. MAGWOOD. As I mentioned yesterday when I was asked the question about whether the Chairman should be removed, I gave the opinion that, my role and my responsibility was to provide truthful information as I saw it. It is not to make personnel decisions. So I am not going to make a recommendation.

Senator SANDERS. That wasn't my question, Mr. Magwood.

Mr. MAGWOOD. And similarly, I wouldn't make a recommendation or make a comment about what my role would be either.

Senator SANDERS. Well, that is an interesting point. It is an interesting point, because according to the Huffington, I am not saying it is right or wrong. According to the Huffington Post, you have been involved in a “coup” to get rid of Mr. Jaczko. I don't know if that is true or not. According to this publication, you may be, if he is gone, in line to become the Chairman. I am asking you a simple question: will you tell us that you, that that is not true and that you would not accept the Chairmanship if Mr. Jaczko left?

Mr. MAGWOOD. Let me first say that I don't think that my characterization as a coup leader is any way correct.

Senator SANDERS. OK, fair enough.

Mr. MAGWOOD. I think that we work—we talked a lot about sending this letter to the White House. It was a mutual decision among the four of us. I don't think there was a coup leader.

Why I have been singled out, I can only guess. But let me just say that I am not even the senior Democrat on the Commission after Mr. Jaczko. So why people point the finger at me, I don't know.

Senator SANDERS. But see, you didn't answer my question. I am not saying I agree or disagree with what the Huffington Post wrote. I am not saying that. I am just, as Mr. Barrasso did, I am quoting from a publication. You didn't answer my question, though. And my question was, if Mr. Jaczko, as a result of political pressure, was forced out of his job, will you tell us now as a member of the Commission, who some suggest, I am not suggesting it, were involved in that action, are you telling us now that no, you are not interested in becoming Chairman to replace Mr. Jaczko?

Mr. MAGWOOD. Let me say I have ever really expressed much interest in being Chairman. I think it is a very time consuming and very difficult job. I hadn't exactly come on the Commission with that in mind. But I also won't sit here and tell you that if the President asked me to serve a role like that, I would turn it down. I am not going to say that.

Senator SANDERS. Madam Chairman, I find that is a very interesting remark. Thank you very much.

Senator BOXER. Thank you very much.

Senator Inhofe.

Senator INHOFE. OK, I was going to suggest that the President would be making that decision anyway, and I seriously doubt he would—anyway. Let me just real quickly, Mr. Jaczko, I understand the NRC Inspector General reports directly to the Chairman, is that correct?

Mr. JACZKO. I am sorry?

Senator INHOFE. That the NRC Inspector General, the Inspector General reports directly to the Chairman. That is you.

Mr. JACZKO. It is a very loose reporting relationship.

Senator INHOFE. OK, but that is what I understand from the 1980 changes that are there. I assume you would say yes.

Mr. JACZKO. Well, again, with all due respect—

Senator INHOFE. I don't want to take a lot of time on it. At any time, did you seek to influence the Inspector General in any way or delay his investigation?

Mr. JACZKO. No.

Senator INHOFE. Mr. Ostendorff, I understand, and I know the process here, but I think you will have to explain it, I understand that a new reactor applicant sent a letter to the NRC asking that the agency waive an administrative delay between approval of a new plant license and its effective date. I also understand that the NRC staff presented that paper to the Commission, recommending retention of the delay. Is that correct?

Mr. OSTENDORFF. Yes, sir, that is correct.

Senator INHOFE. Now, that delay really inures to the benefit of the applicant, to give them time.

Mr. OSTENDORFF. Let me explain it. I think it also will help clarify the Senator Vitter question we were trying to get to when time ran out. The paper that Commissioner Apostolakis was referring to with respect to the staff recommendation being different from what we thought it was going to be, based on our discussion with the office director, we are talking about the same paper. And the staff had told us that there was no nuclear safety issue at all involved in the process once this basically Federal Register notice is transmitted from the NRC down to the Office of Management and Budget.

Hence, it was the office director's recommendation at that point in time that the effective date of this rule be tied to the time period of transmission to OMB. And that was the recommendation that Commissioner Apostolakis and I were referring to.

Senator INHOFE. OK, so both the Director of Nuclear Reactors agreed with the statement you just now made?

Mr. OSTENDORFF. This was the Director of the Office of New Reactors.

Senator INHOFE. New Reactors, that is correct. New Reactors. And does this administrative delay have any safety implications?

Mr. OSTENDORFF. No, sir, it does not.

Senator INHOFE. If I understand it correctly, Chairman Jaczko—no, I will go ahead and yield my last couple minutes to Senator Vitter, because he wanted to get the remainder of his answer.

Senator VITTER. I appreciate that very much. Picking up on the information flow issue, Mr. Chairman, does the whole Commission not vote on a budget or budget issues?

Mr. JACZKO. Yes, at a high level, yes, it does.

Senator VITTER. OK, so I don't understand your previous comment that budget information, detailed budget information should not be provided, certainly upon request, to Commissioners.

Mr. JACZKO. They are, based on the statutory history, the Chairman is solely responsible for preparation of the budget.

Senator VITTER. This is a voting matter. Wouldn't it be reasonable for any budget matter information requested by a Commissioner when they are voting on the budget for that Commissioner to be able to get it, which apparently he or she can't?

Mr. JACZKO. Actually, that is not true. This year, last year's budget there was, I think, a misunderstanding on my part about how information was provided, when the budget was transmitted. So actually this year with the budget submittal, I provided all previous drafts, versions, documents related to the development of the budget. That was actually provided to each Commission office when they received the budget to begin their deliberations.

Senator VITTER. So what was the instance when they asked you for budget information, and it wasn't provided?

Mr. JACZKO. I don't recall what the instance was. But they are provided all information about the budget. The budget itself is a large document.

Senator VITTER. And any request they make about budget issues, that request will be honored timely in terms of information?

Mr. JACZKO. Yes, again, the issue there is really more about timing. I think there has been a tradition to, you know, budget development is, as we say, a sausage making process. So there has, I think, been a tradition to give the Chairman an opportunity to kind of do some of the sausage making, and then present that ultimately to the Commission.

Senator VITTER. Could I ask the other Commissioners to chime in about issues they think still exist here, if any? Anyone.

Mr. JACZKO. Senator, if I could say, I think this was—

Senator VITTER. I would like to move on.

Mr. JACZKO. Sure.

Senator VITTER. First of all, if they are not getting information timely, I think that is in many cases the same thing as not getting information. Time is of the essence.

Mr. Ostendorff, were you going to say something?

Senator BOXER. We will have time in the next round.

Senator Carper.

Senator CARPER. Just a quick question for Dr. Apostolakis and Commissioner Ostendorff. It is my understanding that the NRC staff also recommended that the Commission quickly act on the implementation of spent fuel instrumentation. I believe that these ac-

tions would ensure that we can monitor water levels in the spent fuel pools at our reactors, which was an issue during the Fukushima crisis.

For some reason, that recommendation was not included in the recent actions approved by the Commission. Could you both just very quickly explain why? Very quickly.

Mr. APOSTOLAKIS. It was not included in the ones that were supposed to be acted upon without delay, I believe.

Mr. JACZKO. Subsequently, it was.

Mr. APOSTOLAKIS. Subsequently, it was, yes, that was, I am a bit confused. It is included.

Senator CARPER. Is it? And Commissioner Ostendorff, is that your understanding?

Mr. OSTENDORFF. Senator, I was looking at the SECY 110137, which has the prioritization of the Fukushima Task Force actions. It has a Tier 1, 2, and 3 approach. The staff, upon their review by the steering committee, did add spent fuel pool instrumentation to that list. And that has been approved by the Commission.

Senator CARPER. Good. Thanks very much for that clarification.

Mr. APOSTOLAKIS. May I make a comment, Senator?

Senator CARPER. Yes, very briefly, please.

Mr. APOSTOLAKIS. This is a good example of how competent people have different views. I was talking over dinner actually with some members of the Advisory Committee on Reactor Safeguards. And they said, why do you want to do that? It doesn't improve safety. Now, receiving information of course is always a good thing. But again, if we think in terms of the constraints, in terms of resources and so on, as the Chairman mentioned earlier, they didn't feel that this was of paramount importance and had to be done without delay. Eventually, we said yes, do it.

But I think it is an example of how competent people can have different views. I was very surprised when they told me that.

Senator CARPER. OK, thanks very much.

May I ask a question of the Chairman, let me ask Commissioner Svinicki and then Commissioner Magwood, please. With the work on Fukushima reported and the reported discord between our Commissioners, has the day to day staff work been compromised?

Ms. SVINICKI. I am not aware of a compromise of the staff's efforts.

Senator CARPER. Thank you.

Mr. Magwood, please.

Mr. MAGWOOD. Not that I am aware of.

Senator CARPER. All right.

And let me just ask of the Chairman, where is the Commission on the licensing process of potentially new reactors and the relicensing process of current reactors, please?

Mr. JACZKO. Well, the, for new reactor licensing, that is under deliberation by the Commission, we have a final decision on the AP1000 design currently in front of the Commission, and then we also have in front of the Commission possible actions on licenses for Vogtle and for the Summer sites. License renewal is continuing apace. We have a number of hearings ongoing for license renewal cases which are either in front of the Commission or in front of our

licensing boards, and then the routine staff actions with regard to license renewals is ongoing.

In the interest of candor, this may be an area in which, if we have resource constraints as a result of the Fukushima activities, we may look at license renewal as an area to pool resources. If that were to be the case, I don't anticipate it would have a real impact on any of the license renewals, because many of them come well in advance of the time that they need their actual approvals, if they were to be granted.

Senator CARPER. Do any of the other Commissioners want to add to what the Chairman has just said in this last question? Anybody.

OK. And the other thing I would say, I want to go back to actually comments of Senator Alexander. He used to be a Governor, Senator Alexander was also an aide a long time ago, to Senator Baker, Howard Baker. Not everybody knows that. He was president of the University of Tennessee, chairman of the National Governors Association. And he and I said almost the same thing, there have been times when we have offended people. Sometimes we didn't know it, and in some cases we did. What he and I have done for years, in all the roles we played, as we have literally personally gone to the person who was offended and said, if I have done something to offend you, I apologize. Literally. In some cases I wasn't sure I should apologize, but I have done that routinely. And the door has always been open to let me in.

And I just want to say to the other Commissioners, when this man calls you and says, I would like to come and sit in your office and to talk with you, close your door and just have a good heart to heart, have the door open, have a good discussion, and give him a shot. And I would say, Mr. Chairman, when they do, make the most of it. Thank you.

Mr. JACZKO. Thank you.

Senator BOXER. Thank you very much, Senator.

Senator Inhofe would be next, and help me out here, is it Senator Sessions next?

Thank you, sir. Go ahead.

Senator SESSIONS. I would like to pursue the report issue, and the issue of the Chairman's—the allegation that the Chairman feels it is appropriate to be a gatekeeper with regard to information that gets to the other members of the board. Because I think that is pretty important with regard to the integrity of everything that you do, I believe as board members you have a right to insist on that.

When asked about that yesterday by Chairman Issa, Mr. Jaczko, this was the question: "Is it true that any information that you have has ever been withheld on your request?" And he replied, "Not that I am aware of. I work every day to ensure that the Commission has the information it needs."

I guess I would ask Mr. Ostendorff, don't you think that the Commission, that the Chairman is not entitled to decide the information that you need, that you are entitled to have the information that the Commission and its staff has?

Mr. OSTENDORFF. Senator Sessions, I think it is, in order for us to fulfill our responsibilities on voting on matters that come before us, we need to have the full information and the full views,

uninfluenced by the senior staff—the senior staff, as uninfluenced by any other office. And we provided a few examples of those, and I know it has been a concern of ours. And that was a key factor that led to us writing this letter, when we do not believe that our senior staff, and I have talked to a bunch of them, and I think my other colleagues have as well, they do not feel they can always present their views that might be different from those of the Chairman.

Senator SESSIONS. So when you ask for a staff report and evaluation about an issue, you weigh their recommendation very seriously, as you make your decision?

Mr. OSTENDORFF. Yes, sir, as I said in my opening statement today, I think the prioritization efforts from Fukushima are perhaps one of the key efforts that manifest the need to hear from staff. In my view, not all the safety recommendations made by the Fukushima Task Force had equal safety significance. Some were really, really important. The station blackout example I mentioned earlier is really important to do quickly. And I think the value—and I think Commissioner Apostolakis alluded to this—the value of hearing from staff their unfiltered, uninfluenced recommendations was, where can we get the biggest bang for the buck in the shortest period of time with respect to safety enhancements.

Senator SESSIONS. The report that you got on that, and the information from staff, was it unfiltered or filtered, in your opinion?

Mr. OSTENDORFF. We had concerns.

Senator SESSIONS. You had a concern about it?

Mr. OSTENDORFF. We had concerns with respect to the draw of the SECY paper back in July, that forwarded the Near-Term Task Force report that appeared, that did remove from the Commission recommendations from the staff as to how to go about moving forward with external stakeholder engagement and prioritization.

Senator SESSIONS. Mr. Apostolakis, do you agree that you have concerns in that area, that the staff reports are not getting to you unfiltered on occasion?

Mr. APOSTOLAKIS. I do, because there have been occasions where the staff comes indirectly and says, what is in the report is not what we think. And that doesn't happen every day, I don't want to give you the impression that this is a widespread thing. But in some instances, it has happened. And that is certainly not a healthy situation, it seems to me.

Senator SESSIONS. Commissioner Svinicki, do you share the same concern?

Ms. SVINICKI. Yes. I rely upon the staff providing their independent recommendations, and I have had concerns that I have not had their views in an unvarnished form.

Senator SESSIONS. And Commissioner Magwood.

Mr. MAGWOOD. Yes, I think the experiences my colleagues have talked about, I have seen the same thing, either staff telling us after the fact that papers didn't represent their views, or that there was a paper they would like to present but they can't get it to us. We have had those conversations many times.

Senator SESSIONS. Are any of you aware of the incident in the Issa report where it alleges that the Chairman became shaking angry and accused the deputy executive director of operations of

being less than honest when a vote paper already significantly altered to conform to the Chairman's vision did not conform to his desires, interests, or views? Do you know what incident that might be referring to?

Are you familiar with another incident cited from the Issa review that the Chairman used his supervising authority—time is up, you are right.

Senator BOXER. We will have another round. We will stay here as long as we can.

OK, we are going to move to Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman.

Is there a difference among the Commissioners in how quickly the Task Force should implement Task Force recommendations? Anybody able to answer that? What kind of a timeframe? What kind of rush gets put on these things?

Mr. MAGWOOD. I will take the first shot at that, Senator. I think that, from conversations I have had, I think we are pretty much on the same wave length. I think our understanding is pretty common. We want to move forward as aggressively as practical. And I think we have been moving through the issues as quickly as we can.

Senator LAUTENBERG. As quickly as we can, OK, thank you.

Do you want to volunteer?

Ms. SVINICKI. I agree with Commissioner Magwood, Senator.

Mr. APOSTOLAKIS. Yes, and I do believe that the goal of completing everything in 5 years is a good one.

Mr. OSTENDORFF. Senator, if I may also respond, I know Chairman Jaczko at a prior Committee hearing has been public about a 5-year goal. I think all five of us agree that that is an appropriate goal, and I think we support that. I would like to note that SECY paper 110137, dated the 3rd of October, 2011, is a 51-page paper provided to the Commission by Bill Borchardt, our Executive Director for Operations, and it has a fairly detailed plan. It doesn't have exact every single date in there. But it has a plan to move forward in a number of different areas, I think, to do this in a very responsible, responsive time period.

Senator LAUTENBERG. Why is it felt that the Commissioners wanted to delay the Task Force report on Fukushima? I want to ask you this question. We have heard about the scoldings that took place, and that is not nice. I ran a company that now has 45,000 employees, and I was CEO. Sometimes, I'll be darned if I didn't lose my head and scold somebody. But I had the job for a long time.

So I would ask you, and I will go in order, sir, with you, is Chairman Jaczko unfit or incompetent to serve in his capacity?

Mr. OSTENDORFF. Senator Lautenberg, I would say that my experience with Chairman Jaczko is that he is an extraordinarily bright, competent individual. I have never questioned his commitment to the mission of the NRC nor to nuclear safety. That said, I have had significant reservations with how he conducts himself, with his colleagues, with NRC staff. He and I have had some frank discussions in these areas. There have been some real concerns.

Senator LAUTENBERG. Mr. Magwood.

Mr. MAGWOOD. I don't think I can add to that. I agree with Commissioner Ostendorff's comment.

Senator LAUTENBERG. Restate it for me, please.

Mr. MAGWOOD. Well, I think that I actually admire the Chairman's grasp of regulatory policy and technical issues. We have had conversations over the last year and a half which I think have demonstrated that. Again, however, as Commissioner Ostendorff mentioned, there are other issues, which I think have quite frankly overwhelmed those positive attributes and created a lot of problems for us.

Senator LAUTENBERG. That is pretty heavy hollering to say it overwhelms. You both admire his skills and his knowledge.

And Ms. Svinicki, do you think he is competent, that Chairman Jaczko is competent?

Ms. SVINICKI. I joined in the letter to the White House because I shared the significant concerns of my colleagues. But these decisions ultimately rest in the hands of others, and I leave them to judge whether these events—

Senator LAUTENBERG. So you have no opinion about it.

Mr. Apostolakis.

Mr. APOSTOLAKIS. As I said yesterday, yes, he can do a great job. There are two things he has to correct: control his temper and do not impede the flow of information to the Commissioners, which he doesn't do all the time. But sometimes it happens.

Senator LAUTENBERG. Thank you.

Madam Chairman, everybody kind of thinks that Chairman Jaczko is competent, and that he has to be careful about hollering at people, as I understand it. With this job, it seems like a pretty sketchy kind of appraisal.

Senator BOXER. I am sorry to interrupt you, but I am going to be fair here, and we are going to move to Senator Barrasso.

Senator BARRASSO. Thank you, Madam Chairman.

Mr. Chairman, the House Ranking Member yesterday on the Oversight and Government Reform Committee warned that internal disagreements among the Commissioners should not become what you described as a weapon of mass distraction from the issue of focusing on nuclear safety. And I want to focus on nuclear safety as do people on both sides of the aisle here.

So when employees—Commissioners within an agency are expected to execute the mission of protecting the public from nuclear disasters, is investigating allegations of hostile work environment, outbursts of abusive rage, threats to the viability of the Commission's structure, it is just a weapon of mass distraction that we should ignore and move on, or is this something you think we should actually investigate?

Mr. JACZKO. Well, I always welcome congressional oversight, and I think it is healthy for us as an organization to have that. I welcome these issues, if there are challenges, and I want to address them. I have said that repeatedly. As I said, I have indicated I think it would be a good opportunity to sit down with my colleagues and talk about some of these issues. That is actually something I proposed about a year ago with my colleagues, that we have a meeting, we sit down, we work through some of these issues. And there was not an interest on all of my colleagues to want to do that. But I continue and am committed to having a better dialogue and to understanding where I am exercising my authorities in a

way that is leaving them to feel like they are not getting full access to information. Because I do feel like I am working to provide that.

And you know, I would just say thought that there is a tremendous amount of information that comes to Commission offices. There is a tremendous amount of information within the agency as a whole. And in fact, our Commission procedures do specifically state that when there are resources challenges and when there are multiple requests for information from Commission offices, that has to be balanced somewhere within the resource needs of the agency. And that is ultimately the responsibility of the Chairman.

Senator BARRASSO. Let me just reclaim my time.

Commissioner Magwood, at yesterday's hearing you spoke of misleading reports and a smear campaign against the four Commissioners who wrote to the White House expressing concerns about the hostile work environment. You stated that you do not intend this tactic to succeed. Are there things you would like to respond to in terms of any attacks, any that you would like to respond to today?

Mr. MAGWOOD. Well, I appreciate that. It was rather disturbing to see some of these reports in the media, focusing on my background. As I think I mentioned to Senator Sanders' comment, my background is one that focused largely on research and development. I don't see myself as a voice or representative of the industry by any stretch. As a matter of fact, a lot of people in the industry have never really been happy with me, because they see me as an internationalist and someone who is much more focused on the vast technology than day to day problems.

I did do some—I did have a consulting business after I left DOE. I did two rather small reports for TEPCO on policy level issues that have nothing to do with the work of the NRC. One was on—actually, I take that back, one was actually on emergency planning. So these aren't things that influence me today, they aren't things I think about. I don't have any relationships with people in the industry which I consider to be inappropriate. So I just found these allegations in the press to be really irresponsible. The larger allegations against my colleagues that we are somehow under the control of the industry I just thought was completely outrageous.

Senator BARRASSO. I appreciate it. Thank you for your clarification.

Commissioner Ostendorff, your testimony during the House hearing stated that the White House Chief of Staff Daley has mischaracterized the situation. Can you just elaborate further on what you mean?

Mr. OSTENDORFF. Yes, sir. I said that intentionally yesterday, because I was very concerned at the letter we received Monday night. I in great candor would tell this Committee, and I think it is obvious to everybody, this is an unprecedented action the four of us took. This is not something we just decided on the spur of the moment one afternoon to say, let's go do this. This was the culmination of many months where we have been frustrated, we have seen things that are happening that are wrong. We have an obligation to the American people to stand up and be counted. That is what we did.

I feel like Mr. Daley's response to us, with all due respect to his position as White House Chief of Staff, it is not about lack of communication among the Commissioners, it is not about internal disagreements, it is about, from my standpoint, it is more about doing damage to the agency, and it is about me as a Commissioner and my other colleagues who signed the letter receiving direct reports from senior career executives about the hostile environment at the NRC.

Senator BARRASSO. Thank you, Mr. Ostendorff.

Thank you, Madam Chairman.

Senator BOXER. Thank you.

Mr. Magwood, you said it was disturbing to see reports in the media about yourself. Do you think it was disturbing to the Chairman to see what you said about him in terms of his relationships with staff? Do you think it was disturbing to him?

Mr. MAGWOOD. I am sure it was.

Senator BOXER. OK. Well, let's say it was disturbing to you, it was disturbing to him.

Now, Senator Vitter opened up the issue of treatment of women. So I am going to take that up, because what is said here reminds me of the days—oh gosh, am I dating myself, of Joe McCarthy. I have in my pocket a list of three people who said this, and they are anti-American. I know of one incident, and I know of three.

Well, let me tell you, that is outrageous character assassination. And so what we did is we went over and we talked to several women to find out, anecdotally, if what you are saying is universally true. So one respected woman said, female staffer, that the Chairman is the most fair person, those are her words, the most fair person she had ever met. She went on to say, "He treats everyone equally." Another said, "He invites people to dissent, and I have never seen him mistreat others." One woman said, "What I am floored by is the conduct of the other Commissioners."

So let's put this thing to bed here. I have to be honest with everybody, there are times when I am intense when I talk to my staff. Please, I hope they understand. I get intense. I care, I challenge. So let's not be holier than thou. Because that is something that is hard for people to take.

Now, Senator Barrasso proved that there is a witch hunt going on against the Chairman. Why do I say that? Because he puts into the record the reports from yesterday's hearing, which was a witch hunt. And then he quotes from the reports of the witch hunt. And he puts them in the record. And that is what it was.

You know, Mr. Chairman, when you are in public life, any one of us could tell you that anyone can say anything about you, and Mr. Magwood, he is finding that out, too. So I am sorry, I am really sorry about this. And I think what it is about is something entirely different. I think it is about how fast we are going to move on safety at our nuclear power plants.

There are a lot of people that don't want to move expeditiously. That is not a fact unknown. All you have to do is look at what happened after 9/11. It took 10 years. And without the Chairman's leadership, when he was sitting on the Commission then, moving forward, we never would have gotten it done. And it is life and death stuff.

And who is on the side of the staff? I will tell you who is on the side of the staff. It is my understanding that in September, with Chairman Jaczko's leadership, the senior NRC staff endorsed action without delay. In a statement they said the staff believes that all the Task Force's recommendations, if adopted, would enhance safety, and the staff agrees with moving forward with each of these recommendations.

Now, the Commission is slow walking the staff and then blaming the Chairman for changing the recommendations. These people have 135 years of experience. And I have to say, Mr. Magwood, when we last saw each other, it wasn't the most pleasant. I am sorry if it is not so pleasant. I asked you the following question on June 16th: Will you assure me that the Task Force report containing the recommendations is delivered to my office and Senator Inhofe's office on the day it is delivered to the Commission. We asked everybody. You said yes.

I have an e-mail from July 5th I will place in the record, without objection, that shows your chief of staff suggested you had "wiggle room" in whether to meet this commitment, and asked if she could contact other offices. And you wrote back, it is appropriate to discuss this with other chiefs of staff to see what they are thinking.

I don't know why you felt you needed wiggle room from turning over a report to the Ranking Member and myself. I mean, there are other examples of this which I will put in the record.

[The referenced information is unavailable for public review.]

Senator BOXER. So I think this is all about safety, all dressed up as something else. And I have to tell you, if I go back to my State's areas where they have nuclear power, they have old plants there, millions of people live nearby, they wouldn't be happy if a Chairman was strong or maybe a little bit intense with a staff member. But they want the Chairman and every one of you to make their nuclear power plants safe.

And with that, I will call on Senator Vitter.

Senator VITTER. Thank you, Madam Chair.

Commissioner Ostendorff, I want to get back to one important instance in terms of the flow of information. I understand that in the Vogtle matter, the staff recommendation was different than you expected. Why was that, and did the direct of the New Reactors program explain the change?

Mr. OSTENDORFF. Senator, on August 10th, I had a routine periodic with Mike Johnson, who is the Office Director for the New Reactor Office, which has about 500, 600 people in there. Maybe it is about 500 people. And he and I, he had discussed this upcoming paper that we were going to be receiving in about 2 weeks with respect to this timing of the license effectiveness. And he told me that he recommended that the effectiveness be concurrent with the date the NRC sent the Federal Register notice to the Office of Management and Budget. And we discussed it at great length, that there was no public safety, nuclear safety issue at all. I had a briefing with another Commissioner on this topic.

So I was surprised when August 25th, 15 days later, comes around and the recommendation in that paper was not what I thought it was going to be, but it was rather to keep the status quo. This is the same paper that Commissioner Apostolakis re-

ferred to. We were surprised. What I heard was there was an interchange between the Chairman and Mike Johnson about this issue and that at the Chairman's request, the recommendation was changed.

Senator VITTER. Mr. Apostolakis, could you comment briefly on the incident as well?

Mr. APOSTOLAKIS. Commissioner Ostendorff just gave you more details than I am aware of. But I was informed that what we received was not the staff's original recommendation.

Senator VITTER. OK. Mr. Chairman, in your letter to Mr. Daley, it is 16 paragraphs long, and the second to last paragraph you used the word apologize once. But I read it about 10 times, and I am still unclear what you apologized for. What did you apologize for?

Mr. JACZKO. Well, I am deeply disappointed that the, some of these internal concerns are being made public. I take great pride in my job as Chairman. And part of that job is ensuring that my colleagues fully trust and are willing to work with me. Clearly, I have some work to do in that area, and I am committed to improving that situation.

A lot has been made of this particular paper. And I think to put it in perspective—

Senator VITTER. Can I go back to the apology again?

Mr. JACZKO. Please.

Senator VITTER. The letter says something like you apologize for this being a distraction. That strikes me in politics as a classic non-apology apology. What are you apologizing for? I think it is important to be clear.

Mr. JACZKO. Well, I am very sorry if this is distracting us from nuclear safety. That is our fundamental job. And any—

Senator VITTER. Besides apologizing for the distraction, do you plan on apologizing to anyone any time soon about anything else?

Mr. JACZKO. I absolutely intend to talk to my colleagues, either individually or as a group, understand their concerns, and based on that discussion I intend to do whatever is appropriate to remedy the situation.

Senator VITTER. OK. A while ago when Senator Inhofe was asking questions, he asked, do you agree with the bottom line of the Markey report. And I believe your answer was yes, based on e-mails you have seen from your fellow Commissioners. That is a pretty bold answer, so I just want to make sure—

Mr. JACZKO. I am sorry, that was not my answer, Senator.

Senator VITTER. OK. Well, do you agree with the bottom line of the Markey report, which I would characterize as follows, that all of this hubbub from your Commissioners is really a coup attempt, and it is all about slow walking safety?

Mr. JACZKO. Senator, I am not going to comment on any Congressman's conclusions or recommendations.

Senator VITTER. My question is about what you think. Do you agree with that characterization?

Mr. JACZKO. I was very disappointed to see the content of many of those e-mails. Those were clearly conversations that were going on without my office's knowledge. I don't think that is in the spirit of the openness in which we pride ourselves as a Commission. And

I think it is clearly indicative of a need for better communication among Commissioners.

So I was very disappointed when I saw a lot of those e-mails.

Senator VITTER. Well, unless you want to clarify, I will take that as a yes, then. I find that pretty staggering.

Do you think any or all of your four other Commissioners hold nuclear safety in a lower priority than you do?

Mr. JACZKO. No, I think we all have—

Senator BOXER. You will have to wrap it up.

Mr. JACZKO. I believe we all have different interpretations of what safety means. That is why we have a Commission.

Senator BOXER. I will have to ask you to stop it at that point.

Senator SANDERS.

Senator SANDERS. This has been a very interesting hearing. I think there are two issues. No. 1, obviously the issue that is of concern to the people of the United States of America is that we make sure that our nuclear plants are as safe as they possibly can be. There is a lot of concern, especially since Fukushima, about the safety of nuclear power in this country. And I suspect that what we have here among five intelligent people, all of whom I am absolutely convinced are concerned about nuclear safety, is perhaps a difference of opinion as to how aggressively and rapidly one moves forward. And I suspect there are differences of opinion and now in some cases are being cloaked as personality differences or personal attacks against the Chairman.

So I would say for a start, Madam Chair, my suspicion is, looking at some of the votes that have been cast, there are differences of opinion among intelligent people.

But the second issue that does concern me is some of the personal attacks that have been made against Mr. Jaczko. He has been asked to respond to charges of which he is not aware. As I understand it, Mr. Jaczko, there is a charge that you have intimidated, brought to tears some of your employees. You have indicated to this Committee, I gather, that you are not aware of that, is that correct?

Mr. JACZKO. That is correct. I learned of it within several days or a week.

Senator SANDERS. And you have been charged with having a temper. So let me just ask my fellow Commissioners, again, Mr. Jaczko is being forced to respond to something he is not aware of. But just out of curiosity, Mr. Magwood, have you ever lost your temper before other people that you work with?

Mr. MAGWOOD. No.

Senator SANDERS. Wow. That is interesting.

Ms. Svinicki.

Ms. SVINICKI. I tend to get quieter if I get upset, as opposed to getting loud. Some people are like that.

Senator SANDERS. Mr. Apostolakis, any chance that you may have upset somebody in the course of your discussions?

Mr. APOSTOLAKIS. Yes.

[Laughter.]

Senator SANDERS. Mr. Ostendorff, any chance?

Mr. OSTENDORFF. I remember one significant incident, when I was in command of a submarine, and I recognized that and immediately apologized in front of the entire people that witnessed it.

Senator SANDERS. And maybe I should ask my member, my co-members of the Senate, who in their long careers I am sure never, under any instance, I see Jeff Sessions shake his head, ever said anything that they were feeling badly about to any of their staff members. The answer is, I have no idea what kind of workplace Mr. Jaczko has and what goes on at the NRC, that somebody who is aggressive, who is trying to do a job, may have in some ways hurt the feelings of other people. I suspect it is possible. I suspect that in all of our lives, unlike Mr. Magwood, I have lost my temper. And I suspect I have inadvertently hurt people's feelings.

So I would say that I think the issue that we have to focus on is that everybody on your NRC, everybody up here has to do everything that we can to make certain that the people of the United States of America understand that nuclear power in this country is as safe as it possibly can be. And with that, Madam Chair, that is about all that I have to say.

Senator BOXER. Thank you very much, Senator.

Senator SESSIONS.

Senator SESSIONS. Thank you.

Well, I just don't believe that our problem here is policy difference. Our Chairman said she thought this was about moving expeditiously and about safety and that the four Commissioners didn't agree with that as a matter of policy, and that this explains your criticism of the Chairman in your letter to the President.

Let me ask each of you, Mr. Magwood, is that the reason for your writing the letter, that you disagreed about moving expeditiously to ensure safety?

Mr. MAGWOOD. No. Not at all. As a matter of act, the Commission has taken an initial action on all the Task Force recommendations except for one, the first one, at this point, and actually has added to the agenda beyond what the Task Force has contemplated. So I feel that we have moved forward very aggressively and very comprehensively.

Senator SESSIONS. Ms. Svinicki, do you agree that this is a complaint you have made only about moving faster for safety?

Ms. SVINICKI. No, I don't agree with that characterization.

Senator SESSIONS. Mr. Apostolakis.

Mr. APOSTOLAKIS. No. The letter has nothing to do with Fukushima.

Senator SESSIONS. Mr. Ostendorff.

Mr. OSTENDORFF. I agree with my colleagues. This is nothing to do about moving forward on Fukushima.

Senator SESSIONS. I think I didn't get to complete my question about the Issa report interviewed staff, and it was reported that the Chairman used his supervisory authority to berate and compel staff to withdraw a voting paper that included a suggestion that was contrary to his preferred course of action.

You have talked about that in general, Mr. Ostendorff. Are you aware of that concern?

Mr. OSTENDORFF. Senator, this dealt with this, this was referenced in our letter to the White House, the withdrawal of the

original staff-recommended 5 pages on SECY paper 110093, which had detailed recommendations, presented quite frankly, by Mr. Borchardt and his deputy, Marty Rigilio, as to how to move forward with Fukushima recommendations. That paper was withdrawn and replaced by a cover sheet.

Senator SESSIONS. And that denied you and the Commission members important information as you were seeking to make a decision?

Mr. OSTENDORFF. I would say that—

Senator SESSIONS. Or could have had that effect if you hadn't otherwise—

Mr. OSTENDORFF. I am sorry, excuse me, sir?

Senator SESSIONS. It could have had that effect?

Mr. OSTENDORFF. Yes, it could have.

Senator SESSIONS. One of the allegations is that the Chairman used his, introduced political considerations as part of his discussions with Democratic appointees.

Are you aware of, Mr. Magwood, of any instance in which you were urged, for political loyalty or other reasons, to vote one way or another on an issue?

Mr. MAGWOOD. I think I would like to not answer that question right now, Senator. I would like to perhaps get back to you for the record.

Senator SESSIONS. Fair enough.

And Mr. Apostolakis.

Mr. APOSTOLAKIS. A long time ago, once, there was a hint that I should act in a certain way.

Senator SESSIONS. Well, and Madam Chairman, I will ask about the incidence of abuse of women.

Mr. Magwood, your chief of staff, Patrice Bubar, stated, "Sometimes the tactics of the Chairman used are threatening and intimidating." I understand that Ms. Bubar is a recipient of the President's Meritorious Rank Award and Distinguished Career Service Award. Do you have any reason to question her comments about her dealings with the Chairman?

Mr. MAGWOOD. No, I don't. But I also don't think that she has had any personal experience in that direction.

Senator SESSIONS. Madam Chairman, thank you for allowing this full hearing, and we have had some disagreements. I would urge the majority, Madam Chairman, to understand that I believe this does—is divorced from policy differences. I think it really is a matter of the lawful operation of a Commission which has to depend on the reports and advice they get, and be able to be sure of the judgment of the Chairman in declaring an emergency in which he then becomes the sole authority of the Commission. It is very real, and I thank the Chair.

Senator BOXER. Well, I just want to say before my good friend leaves, and he is my good friend, that the Chairman checked with the General Counsel immediately before taking on any of his powers. And within 6, 7 days of Fukushima, and I will put it in the record, without objection, he got a letter back explaining exactly what he was permitted to do. So I really think a lot of this is non—that is why I think this is really about culture at an agency, the safety issues.

Here is another, this is really interesting, I think you will find it fascinating. At the same time these Commissioners were exchanging e-mails and doing all that they did and plotting their letter or whatever they did to send to the White House, against the Chairman, there was a confidential survey of all the employees in every Federal agency. This is what happened. This is supposed to be a man without leadership? This is supposed to be man who is cruel to his staff? Listen to what happened.

On the issue of effective leadership, the NRC was rated 1 out of the 30 agencies. On the issue of fairness, 1 out of the 30 agencies. The issue of fairness of supervisors, 1 out of 30. On the issue of family friendly culture, and benefits, 1 out of 30. While colleagues on the other side make it sound like you don't really care about people's feelings, your agency came out on top. Work-life balance, 1 out of 30.

So why is it that I think this is really, well, a diversion is a nice way to put it, it is the way the Chairman put it. I think it is a subterfuge for something else. And Mr. Magwood, I have to tell you, it is very disturbing to me, you did have opposition from 100 groups of enviros. I wound up voting for you because you came before us and you said, I firmly believe that maintaining uncompromisingly high levels of safety is the first and most important job of any organization that handles nuclear material. That is what you said. And you had every single big player in industry support you. So don't say that you didn't, because I have the list. And I will put them in the record, because they are all in the Nuclear Energy Institute.

[The referenced information follows:]

News Release

Nuclear Energy Institute FOR IMMEDIATE RELEASE

- Contact:202.739.8000
- For Release:October 13, 2009

Industry Welcomes White House's Intent to Nominate Apostolakis, Magwood to NRC

WASHINGTON, D.C.—The Obama Administration announced on Friday its intent to nominate George Apostolakis and William Magwood to serve as commissioners on the U.S. Nuclear Regulatory Commission. Following is a statement by Tony Pietrangelo, NEI's senior vice president and chief nuclear officer, on the announcement of the planned nominations:

"The administration's nominees to serve on the Nuclear Regulatory Commission are qualified leaders on nuclear technology issues and have the breadth of experience necessary for an agency that effectively oversees the nation's commercial nuclear industry.

"The industry is particularly pleased that the NRC will be fully staffed at the commissioner level. The NRC operated at its best when there is a collegial dialogue on the issues among the full complement of commissioners.

"The industry's first priority is operating 104 reactors safely and reliably. As the industry proceeds with the license applications for new reactors, uranium enrichment facilities and other commercial nuclear energy facilities, it is critically important that the NRC ensures the stability and predictability of the regulatory process.

"It is also vital that the NRC effectively meets the challenge of incorporating thousands of new staff at a time when it is reviewing more permits than in the past two decades. Accomplishing the knowledge transfer among its staff and promoting regulatory stability and predictability is necessary for the NRC to continue to be an effective regulator and provide the oversight that has helped achieve the safest and most reliable nuclear energy program in the world."

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 Security Response Evaluation Program
 Security Standards
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 Pacific Northwest National Laboratory
 Bechtel Power Corporation
 Bismarck State College
 Black & Veatch
 Booz Allen Hamilton
 Brazosport College
 Brigham Young University
 Brown, Werner & Brothers LLP
 Bruce Power
 Building and Construction Trades
 Department, AFL-CIO
 Burns and Roe Group

 CBB&I
 CH2M Hill
 CTLGroup
 California Institute of Technology
 Cameco Corporation
 Power Resources, Inc.
 Cape Fear Community College
 Carnegie-Mellon University
 The Catholic University of America
 Central Research Institute of Electric
 Power Industry
 Certrec Corporation
 Chattanooga State Technical
 Community College
 Chubu Electric Power Company, Inc.
 Citizens for Nuclear Technology Awareness
 Clemson University
 College of Southern Maryland
 Colorado State University
 Columbia Basin College
 Columbia University
 Comision Federal de Electricidad
 Connecticut Yankee Atomic Power
 Company
 Constellation Energy
 Long Island Power Authority
 ConvergDyn
 Cornell University
 Curtiss Wright Flow Control Company

 Dairyland Power Cooperative
 Genoa Fuel Tech
 Dakota County Technical College
 David Ramendick Consulting
 Day, Berry & Howard LLP
 Day & Zimmermann Power Services
 Delaware County Community College
 The Detroit Edison Company [DTE
 Energy Company]
 DevonWay, Inc.
 Dickstein Shapiro LLP
 Dominion Generation [Dominion
 Resources Inc.]
 *Central Vermont Public Service
 Corporation*
 Massachusetts Municipal Wholesale

Electric Company
Old Dominion Electric Cooperative
Virginia Electric & Power Company
 Duane Morris LLP
 Duke Energy Corporation
 North Carolina Municipal Power Agency
 *North Carolina Electric Membership
 Corporation*
 Piedmont Municipal Power Agency
 Duke University

 EDF
 Edgen Murray Corporation
 Edlow International Company
 Emirates Nuclear Energy Corporation
 Enercon Services, Inc.
 Energy Industries of Ohio
 Energy Northwest
 Bonneville Power Administration
 Energy Resources International, Inc.
 Engineering Planning
 and Management, Inc.
 Entergy Operations, Inc. [Entergy
 Corporation]
 Entergy Arkansas, Inc.
 Entergy Gulf States, Inc.
 Entergy Louisiana, Inc.
 Entergy Mississippi, Inc.
 Entergy New Orleans, Inc.
 Entergy Nuclear Operations, Inc.
 TLG Services, Inc.
 *South Mississippi Electric Power
 Association*
 System Energy Resources
 EP Consulting, LLC
 ERIN Engineering and Research, Inc.
 EXCEL Services Corporation
 Epsilon Systems Solutions, Inc.
 Eskom Holdings Limited
 Estrella Mountain Community College
 Excelsior College
 Exelon Corporation
 MidAmerican Energy Company
 PSEG Power LLC
 Exponent, Inc.
 Exponent Engineering, Inc.

 The Federation of Electric Power
 Companies of Japan
 FirstEnergy Corp.
 FirstEnergy Nuclear Operating Company
 *The Cleveland Electric Illuminating
 Company*
 Ohio Edison Company
 Pennsylvania Power Company
 The Toledo Edison Company
 Florence Darlington Technical College
 Fluor Corporation
 Fluor Daniel, Inc.
 Foro de la Industria Nuclear Española
 Francis Marion University

- Fuji Electric Corp. of America
- Gaston College
- GE Healthcare
- GE Hitachi Nuclear Energy
- GZA GeoEnvironmental, Inc.
- General Atomics
- Rio Grande Resources Corporation
- Sequoyah Fuels Corporation
- Sorrento Electronics
- General Dynamics
- Electric Boat
- Georgia Institute of Technology
- Globe Nuclear Services and Supply
- GNSS, Limited
- Goodwin Procter LLP
- Greenberg Traurig, LLP
- Harkins Cunningham LLP
- Harvard School of Public Health
- Hinds Community College
- Hitachi, Ltd.
- Hogan Lovells US LLP
- Holtec International
- Honeywell
- Hughes Hubbard & Reed LLP
- Huntington Ingalls Industries
- Newport News Industrial
- Hurton & Williams
- Hyperion Power Generation, Inc.
- Purple Mountain Ventures, Inc.
- Saint Blackwell, Inc.
- IEA of Japan Co., Ltd.
- IEM, Inc.
- ITOCHEM Corporation
- Idaho National Laboratory
- Idaho State University
- Indian River State College
- Infrastructure Defense Technologies LLC
- International Access Corporation
- International Brotherhood of Electrical Workers
- International Isotopes Idaho, Inc.
- International Technology and Trade Associates, Inc.
- Iowa State University of Science and Technology
- Ironworker Management Progressive Cooperative Trust
- Japan Atomic Energy Agency
- The Japan Atomic Power Company
- Japan Bank for International Cooperation
- Japan Electric Power Information Center
- Japan NUS Co., Ltd.
- Japan Nuclear Energy Safety Organization
- Japan Nuclear Technology Institute
- Jones Day
- KEPCO Engineering & Construction
- Company
- KLD Associates, Inc.
- KLD Engineering, P.C.
- K & L Gates LLP
- The Kansai Electric Power Co., Inc.
- Kansas State University
- Kiewit Corporation
- Kleinsorg Group Risk Services, LLC
- Kontek Industries
- Korea Atomic Energy Research Institute
- Korea Hydro & Nuclear Power Company
- Ktech Corporation
- Kyushu Electric Power Company, Inc.
- Lakeland Community College
- Lake Michigan College
- Lakeshore Technical College
- LeBlond and Associates, LLC
- Lightbridge Corporation
- Linn State Technical College
- Livingstone College
- Lockheed Martin Corporation
- Loeb & Loeb
- Longenecker & Associates
- Luminant Power [Energy Future Holdings]
- CP Nuclear Power
- Luzerne County Community College
- MACTEC, Inc.
- MACTEC Engineering and Consulting, Inc.
- MACTEC Development Corporation
- MCR Performance Solutions, LLC
- MPR Associates, Inc.
- Madison Area Technical College
- Maine Yankee Atomic Power Company
- Maracor Software & Engineering, Inc.
- Marubeni America Corporation
- Massachusetts Institute of Technology
- Massachusetts Maritime Academy
- McMaster University
- Mercer Thompson, LLC
- Metal Trades Department, AFL-CIO
- Miami Dade College
- Michigan Technological University
- Milbank, Tweed, Hadley & McCloy LLP
- Miller & Chevalier Chartered
- Mississippi State University
- Mitsubishi Heavy Industries, Ltd.
- Mitsubishi Nuclear Energy Systems, Inc.
- Energis Company
- Mitsui & Co., Ltd.
- Model Performance, LLC
- Monroe County Community College
- Morgan, Lewis & Bockius LLP
- NAC International
- NUKEM, Inc.
- National Defense Industrial Association
- National Tsing Hua University
- National University of Singapore
- Nebraska Public Power District
- Neutron Energy, Inc.
- New Mexico Institute of Mining and Technology
- New Mexico Junior College
- New York Nuclear Corporation
- NextEra Energy, Inc.
- Florida Power & Light Company
- NextEra Energy Duane Arnold, LLC
- NextEra Energy Seabrook, LLC
- NextEra Energy Point Beach, LLC
- Central Iowa Power Cooperative
- Corn Belt Power Cooperative
- Florida Municipal Power Agency
- Hudson Light & Power Department
- Massachusetts Municipal Wholesale Electric Company
- Orlando Utilities Commission
- Taunton Municipal Lighting Plant
- Next Generation Nuclear Plant
- Industry Alliance
- Nexus Technical Services Corporation
- NitroSecurity
- Nordostschweizerische Kraftwerke A.G.
- North Carolina State University
- Northeast Alabama Community College
- Northern Michigan University
- Northrop Grumman
- Nuclear Electric Insurance Limited
- Nuclear Power Institute
- NuScale Power, Inc.
- OECD Nuclear Energy Agency
- Oak Ridge Associated Universities
- Ohio State University
- Omaha Public Power District
- Onondaga Community College
- Ontario Power Generation Inc.
- Operations Support Services, Inc.
- Oregon State University
- Owl Computing Technologies, Inc.
- Oxford Institute for Energy Studies
- PPL Corporation
- Allegheny Electric Cooperative, Inc.
- PSEG Nuclear LLC [Public Service Electric and Gas Company]
- Public Service Enterprise Group
- Exelon Corporation
- Pacific Gas and Electric Company
- Paladin Energy Ltd.
- PaR Systems, Inc.
- Parsons Commercial Technology
- Paul C. Rizzo Associates
- Pegasus Global Holdings, Inc.
- Pennsylvania State University
- Pillsbury Winthrop Shaw Pittman LLP
- Polytechnic University of Puerto Rico
- Powertech Uranium Corp.
- Precision Components Corporation
- Preferred Licensing Services, Inc.

- Progress Energy
 City of Alachua
 City of Bushnell
 City of Ocala
 Gainesville Regional Utilities
 Kissimmee Utility Authority
 Leesburg Electric Department
 North Carolina Eastern Municipal
 Power Agency
 Orlando Utilities Commission
 Seminole Electric Cooperative
 Utilities Commission New Smyrna
 Beach
 Purdue University
- Reliability and Safety Consulting
 Engineers, Inc.
 Rensselaer Polytechnic Institute
 Rhode Island Nuclear Science Center
 Rice University
 Rio Tinto Uranium Limited
 Rolls-Royce plc
- SCHOTT North America, Inc.
 S.M. Stoller Corporation
 STP Nuclear Operating Company
 Austin Energy
 CPS Energy
 NRG Energy
 Sacramento Municipal Utility District
 Salem Community College
 Sandia National Laboratories
 Sandmeyer Steel Company
 Sargent & Lundy, LLC
 Savannah River Nuclear Solutions, LLC
 Scot Forge Company
 ScottMadden, Inc.
 Shaw Power Group
 Sheet Metal Workers' International
 Association
 Signal Equities, LLC
 Sound & Sea Technology
 South Carolina Electric & Gas Company
 [SCANA Corporation]
 Santee Cooper
 South Carolina State University
 Southeast Community College
 Southern California Edison Company
 [Edison International]
 Anaheim Public Utilities Department
 Riverside Public Utilities
 San Diego Gas & Electric Company
 Southern Illinois University
 Southern Nuclear Operating Company
 [Southern Company]
 Gulf Power Company
 Mississippi Power Company
 Savannah Electric Power Company
 Alabama Power Company
 City of Dalton
 Georgia Power Company
- Municipal Electric Authority of Georgia
 Oglethorpe Power Corporation
 St. Cloud Technical College
 Stanford University
 Stevenson & Associates
 Vibration Engineering Consultants
 Strathmore Minerals Corp.
 Structural Integrity Associates, Inc.
 Sumitomo Corporation
 Sutherland Asbill & Brennan, LLP
- TENAM Corporation
 TW Metals - Nuclear Materials Solutions
 Taiwan Power Company
 Talisman International, LLC
 Technabexport
 Tennessee Valley Authority
 Texas A&M University
 Thomas Edison State College
 Three Rivers Community College
 Tigris Uranium Corp.
 Titan Uranium Inc.
 The Tokyo Electric Power Company, Inc.
 Toshiba America Nuclear Energy
 Corporation
 Total Protection Services Carolinas, LLC
 TradeTech
 TradeTech Energy LLC
 Transport Logistics International
 Tri-En Corporation
 Troutman Sanders, LLP
 Turner Industries Group, L.L.C.
- UNESA
 Asociación Nuclear Ascó-Vandellós II,
 A.I.E.
 Central Nuclear de Cofrentes
 Central Nuclear de José Cabrera
 Central Nuclear de Santa María de
 Garoña
 Centrales Nucleares Almaraz-Trillo
 Endesa
 Hidroeléctrica del Cantábrico
 Iberdrola
 Nuclenor
 Unión Fenosa
 URS Corporation
 Washington TRU Solutions LLC
 USEC Inc.
 U.S. Naval Academy
 United Association of Journeymen and
 Apprentices of the Plumbing and Pipe
 Fitting Industry of the United States
 and Canada
 United States Energy Association, Inc.
 University of Alabama
 University of Alberta
 University of Antofagasta, Chile
 University of Arizona
 University of Bologna
 University of California
- University of Cincinnati
 University of Colorado
 University of Denver
 University of Detroit
 University of Florida
 University of Idaho
 University of Illinois
 University of Maryland
 University of Massachusetts
 University of Michigan
 University of Missouri
 University of Nevada, Las Vegas
 University of New Mexico
 University of North Texas
 University of Notre Dame
 University of Pittsburgh
 University of Rhode Island
 University of South Carolina
 The University of Tennessee
 University of Texas at Austin
 University of Texas of the Permian Basin
 The University of the District of Columbia
 The University of Tokyo
 University of Virginia
 University of Washington
 University of Wisconsin
 Ur-Energy Inc.
 Uranium Energy Corp
 Uranium One
 Energy Metals Corporation
 Uranium Resources, Inc.
 Urenco Inc.
 Louisiana Energy Services
 National Enrichment Facility
 Utility Workers Union of America
 The Ux Consulting Company, LLC
- Vanderbilt University
 The Victoria College
 Virginia Polytechnic Institute
 Virginia Uranium, Inc.
- Wallace Community College - Dothan
 Washington State University
 West Kentucky Community
 and Technical College
 Westchester Community College
 Westerman Companies, Inc.
 Westinghouse Electric Company
 Fauske & Associates, Inc.
 PCI Energy Services, Inc.
 PaR Nuclear, Inc.
 Scientific Ecology Group, Inc.
 Wharton County Junior College
 Winston & Strawn LLP
 Wolf Creek Nuclear Operating Corporation
 Kansas City Power & Light Company
 Kansas Electric Power
 Cooperative
 Kansas Gas & Electric Company
 Worcester Polytechnic Institute

WorleyParsons Group, Inc.
Polestar Applied Technology

Xcel Energy

Yankee Atomic Power Company

Zachry Nuclear, Inc.
Zachry Nuclear Engineering, Inc.

Senator BOXER. But let me just say this. Why I am so troubled, I sent the NRC a letter emphasizing “the importance of transparency” and urging the NRC to act promptly—those are my words—to implement the Task Force recommendations. That was a letter I sent to all of you. By the way, you haven’t done it, and it is a nightmare for me to think that this is going to take 10 years, just like the other Commission took. And that is a disaster, but we will talk more about that.

But I have a document showing that 1 day after I sent this letter, your chief of staff—your chief of staff—wrote to you saying “Attached is a letter from Boxer on the Task Force Report. I don’t know if Inhofe plans on sending a counter-letter.” And then you replied, “It would be nice if someone did.”

Why do you need a counter-letter to a straightforward letter that says, will you be transparent and will you act promptly? Why did you feel the need to want a counter-letter to my very open letter?

Mr. MAGWOOD. To be honest, I actually don’t remember that exchange. But let me say that there was never, in my view, there was never any possibility or any question that we were going to release a Task Force report very quickly. As I mentioned earlier, it was really a conversation about whether to release it immediately or wait a couple of days to give the Commission a chance to read the report.

Senator BOXER. OK, well, wait a minute. I am going to send this over to you, it is your e-mail. Would you send this over to Mr. Magwood?

That is not right. If you come before us to get our votes, and I have to stand up to 100 environmental groups that frankly, I respect, and say, you know what, he convinced me. And then you have to get a counter-letter from my good friend, an adversary on certain issues, Senator Inhofe, when all I am asking for is transparency and quick action, it is extremely disturbing. So that is why I say, this isn’t a court of law. I think we proved, I believe—now, of course I bring to bear a certain prejudice about my own arguments and that of Senators Sanders, Lautenberg, and the others. I admit it.

But I think we proved today that this can’t possibly be about what you four say, because your own staff rates this agency high in leadership and family friendliness. So it is not about that. It is not about grabbing power, because your General Counsel told you exactly what to do. And the IG, although there was lots in the report that was disturbing, it was mostly the charges, his findings never found that you did anything improper.

And you yourself have said if it is a matter of my style, I am willing to change it.

So let’s move on from here, and I am happy to call on Senator Barrasso.

Senator BARRASSO. Thank you, Madam Chairman.

Mr. Chairman, do you think that these other Commissioners who are with you have a lower commitment to safety than you do?

Mr. JACZKO. I think I—I have worked on the Commission for a long time, and I think all Commissioners come with different ideas of what safety is. It really gets to a question of, in effect, how safe is safe enough. And I think my voting record shows that I tend to

be more—I don't know what the right word is here, perhaps conservative—when it comes to safety decisions in the sense that I am willing to perhaps require more of licensees than my colleagues are, or that varies by issue to issue. So it is hard to say that generically there is a kind of a way to categorize it.

But in some cases I do tend to take positions that I think are more restrictive on licensees, is probably the best way I put it.

Senator BARRASSO. Because I am looking at the letter that you sent 8 days ago to Bill Daley, White House Chief of Staff. It says, unfortunately, you say, all too often when faced with tough policy calls, a majority of this current Commission, these four people, has taken an approach that is not as protective of public health and safety as I believe is necessary. So that says to me that you truly don't believe that they have the same commitment to public safety as you do, at least as I read your words right here.

Mr. JACZKO. Senator, I think that really is a reflection of our voting records. We have disagreements on policy, and I don't have a problem with those differences on policy. But I think if you look at our voting records, there are some differences in our take on the approach to safety and what is appropriate for safety.

Senator BARRASSO. To the other four Commissioners, given everything that has happened, given your repeated attempts to solve the problem internally, I guess I have to ask, do you have the confidence that the Chairman's behavior is going to change? And I have a couple of minutes left, is there anything else that any of the four of you who signed this letter would like to add? Why don't we start with Mr. Magwood and work our way down.

Mr. MAGWOOD. I don't think I have anything further to add. I am skeptical that change will occur. One can always hope, but skepticism is quite high.

Senator BARRASSO. Ms. Svinicki.

Ms. SVINICKI. I don't have anything additional to add. I would just add as a personal matter, it is not in my nature to completely give up on people. I just don't approach relationships that way.

Senator BARRASSO. Mr. Apostolakis.

Mr. APOSTOLAKIS. I am hoping he will.

Mr. OSTENDORFF. This is an extraordinarily difficult issue. And I know that the four of us have done what we think is right, that we have had grave concerns and felt an obligation, because of damage we saw being done at the agency. I take the Chairman at his word, what he said today, that if he is committed to changing his way of doing business and behavior, then I will listen to his proposed changes. But I will just tell you that if we had great confidence that things were going to change, we would not have sent the letter to the White House when we did.

Senator BARRASSO. And when I read this article, when I read this letter that the Chairman does not believe, and he could insert any of your names, because he said all of you, the majority of this current Commission has taken an approach that is not as protective of public health and safety as I believe is necessary for public health and safety in the country, do you believe you take positions that are necessary and are protective of public health and safety in this country?

Mr. OSTENDORFF. Yes, I do.

Senator BARRASSO. Mr. Apostolakis.

Mr. APOSTOLAKIS. Absolutely, yes.

Senator BARRASSO. Ms. Svinicki.

Ms. SVINICKI. Yes, Senator.

Senator BARRASSO. Mr. Magwood.

Mr. MAGWOOD. Absolutely.

Senator BARRASSO. Thank you. Thank you very much.

Thank you, Madam Chairman.

Senator BOXER. Thank you so much, Senator.

Senator Sanders.

Senator SANDERS. I think it is just important to reiterate, and make sure we have it in the record, that after all of the attacks about the "hostile work environment" that in the major surveys that are done of various Government agencies, in terms of being the best places to work, time after time, on issue after issue, the NRC comes out to be No. 1 and No. 2 out of 30 or 31 agencies. That is pretty good. And I would congratulate the leadership of the NRC, Mr. Jaczko and others, for making that happen.

There is an issue that has concerned me for a while, and that is, when members of the Senate have to vote, we go down to the table, we say yes, we say no. In 2 seconds, the whole world knows how we vote. But you guys have a much more obscure and complicated process. And it concerns me very much.

So I am going to ask you a very, very simple question. To increase accountability, so the American people know how you are addressing and voting on very, very important issues, will each of you commit to conduct votes in public where people can see for themselves how you fulfill your responsibility to protect public health and safety? Start off with Mr. Magwood then move on down the line.

Mr. MAGWOOD. I have to be honest, Senator, I am not sure I understand the question. We do vote in public to affirm our decisions. Which, if you can be—

Senator SANDERS. You do not—I mean, when we vote, we go down, and we say yes or no. There is an issue. Sometimes you vote and people don't know about it for weeks later. Sometimes your votes, as I understand it, are cloaked in reports that you make. That is an unusual way to do democracy.

So what I am simply asking is, will you commit to us to conduct votes in public where people can see for themselves how you vote?

Mr. MAGWOOD. Let me just commit to follow up with you later, Senator. I would be happy to visit with you, because I am still not sure I understand exactly what the—

Senator SANDERS. I just don't think it is an awfully complicated question. People would think we would pretty silly if we go down and vote this afternoon but nobody knows how we vote, and maybe 2 weeks later, Senator Sessions or Bernie Sanders issues a report describing how we voted. People want to know, did you vote yes, did you vote no. That is my question.

Mr. MAGWOOD. Senator, I know Chairman Jaczko has a practice of releasing his votes, I think within 2 days or something, of casting his votes. If that is the sort of thing you are talking about, that is certainly something I would be willing to consider.

Senator SANDERS. Willing to consider.

Commissioner Svinicki.

Ms. SVINICKI. My understanding is the NRC's notation voting process is similar to that used at many boards and commissions. When a decision is arrived at, our votes are posted to the NRC Web site and made public. A fundamentally different voting system of just yes or no would be a real departure from the way we vote now, which is to vote on complicated, 100-page reports. We often vote with a lot of commentary, and then we arrive at a majority decision.

Senator SANDERS. I believe that—well, I will tell you that sometimes we vote on 1,000-page reports, but we still have to, we do it, and 3 seconds later we get telephone calls telling us, from angry constituents, as to why we voted the way we voted. And I am asking you—you are right, I am asking you, are you going to change, will you support changing that way?

Ms. SVINICKI. I support, the process that we use now I think allows us to consider the complexity of these issues. It has been used since the beginning of the agency.

Senator SANDERS. I understand. But in all due respect, Commissioner, some of the issues that we have to deal with are fairly complex as well.

Chairman Jaczko.

Mr. JACZKO. Yes, I believe actually we should return to some of the practices that were undertaken by the Commission in the past. In the past, the Commission conducted its actual deliberations on voting in public meetings, and actually conducted the actual process of voting in public meetings. So the notation voting process was introduced, I believe, in the 1980s, by a particular Chairman. And it has been refined over the years. But I think a return back to an actual voting session, where we get in a room, we say yes or no, we deliberate, discuss, if we need to edit or modify positions, we do it all in public, simultaneously rather than the process we use currently.

Senator SANDERS. Thank you.

Mr. Apostolakis.

Mr. APOSTOLAKIS. There is great value in the notation vote, voting process we have now. There are very intense deliberations in my office with my staff and all that. And I don't want to lose that. I am all for public information, public votes and so on, as long as I don't lose that.

I am not sure deliberating in public is as easy as the Chairman presents it, but I am willing to listen. But the vote is public. The votes now are public. They are delayed sometimes. But they are public, except in adjudicatory matters.

Senator SANDERS. Mr. Ostendorff.

Mr. OSTENDORFF. Senator Sanders, I am looking at my vote here that I cast July 27th on the Fukushima Task Force report. It is a 5-page, single-spaced vote. It was made public a couple of weeks after it was cast.

So I would say that the notation voting process we currently undergo is fulsome, it provides a very full explanation of our positions. It is transparent.

Senator SANDERS. I am not quite clear. What does that mean, a 5-page vote? You voted yes or no, then you gave an explanation as to why you voted.

Mr. MAGWOOD. Sir, I worked as the Counsel for the House Armed Services Committee. I have seen many votes in the Senate and the House. I understand that most of those are yes or no votes. We have a different process, as the Chairman alluded to here, that deals with notation votes that explain our positions. These are complicated matters. These are public record.

Senator SANDERS. I believe, I do, I appreciate that they are complicated matters. Virtually everything that the United States does is enormously complicated. But to the end of the day, to the degree that we can bring forward transparency, Mr. Apostolakis, everybody agrees here. There should be fulsome debate. Fulsome debate. And take as much time as you can to argue with each other, work out compromises, to do what you do.

But I think to the degree that that can be done under public scrutiny and that your votes are made public on the day that you make them, I can't see why that is not a positive thing.

Madam Chair, thank you.

Senator BOXER. Well, yes. Do any of my colleagues on the other side wish to make a closing comment before I close?

Senator SESSIONS. I would just say thank you, Madam Chairman. You have been here, you have let us have our questions, and we have had a healthy debate. We disagree a lot on the motivations and how this thing happened. I would just express my appreciation for those members who felt it necessary to raise with the White House the problems that you saw. I believe you did that with integrity, with interest for the Government, and I believe there is a factual basis that has been well-established to justify your concerns.

Thank you, Madam Chairman.

Senator BOXER. Thank you so much, Senator.

Senator BARRASSO, do you want to make a comment?

Senator BARRASSO. Yes, Madam Chairman, I would. We have four members of the Commission who are here, two Republican, two Democrat. All unanimously confirmed by the U.S. Senate. Three appointed by President Obama. It is historic to sign a letter like this. And it is courageous. And I want to thank you for your commitment to public safety and to public service, and I am grateful that you are all members of this Commission. Thank you for being here with us today.

Thank you, Madam Chairman.

Senator BOXER. Thank you so much.

I want to thank all of the Commissioners for being here. I want to say to the Chairman, you are one strong, good man. You are a good man. And as I look at the history of nuclear power in this country, the people who are calling for safety get pounded. And I get back to that, because there is just no proof to what my colleagues are saying about your leadership, when just at the time that they are writing letters complaining and all this and that, you are being rated by your own staff and your own employees as 1 out of 30 on effective leadership in terms of the way you run the place.

I am disturbed at what has gone on. And I had hints of this the last time we met. And I urged you at that time, please, all of you, sit down and do what is right for the country. A lot of us took our chances when we voted for you, OK? On both sides of the aisle. Both sides of the aisle. Because this agency is not about partisanship, it is about safety of the highest degree. Because look at what happened at Fukushima. God forbid something like that ever happen. It stood that country on its head, and whether it ever recovers from it, history will note. But it will never be the same.

So we are not dealing with some harmless waste material here. You know that. You are all smart on this.

So I am going to ask you each one question. And before, you must answer yes or no. It is not a hard question. I am going to send you a letter with Senator Sanders and others, hopefully on both sides, I don't know, I will have to circulate it. It is going to ask each of you individually, of the 12 recommendations made by the staff, the Task Force, which do you feel can be accomplished within a time table of 90 days, 6 months, a year. We will give you some chance to explain. And I am going to ask you today if you would answer that letter to the best of your ability. If you don't know, that is unfortunate. You should know at this point.

But my fear is, we are going to wait 10 years to get this done. And my people at home, they may shut down the nuclear plants with an initiative. They need to know that you, we are doing our job. So that letter, I think, is very important.

Now, you have said yes to me on other occasions and haven't exactly lived up. So before you answer it, if you feel you can't answer that letter, say no.

So will you please respond to me? And I will share it with all members of the Committee on both sides of the aisle, on which of the 12 recommendations you think could be done within 90 days, 6 months and a timeframe, your best analytical answer, for each of those.

I will start with you, Mr. Magwood. Will you answer that letter?

Mr. MAGWOOD. Yes.

Senator BOXER. Thank you.

Ms. SVINICKI. Yes. Yes, Chairman, I will.

Senator BOXER. Thank you very much.

Mr. JACZKO. Yes.

Senator BOXER. Thank you.

Mr. APOSTOLAKIS. By done, you mean implemented at the plants?

Senator BOXER. No, a decision to send, your decision to send out the order to the plants.

Mr. APOSTOLAKIS. Yes, I will answer.

Senator BOXER. Thank you.

Mr. OSTENDORFF. Yes, Madam Chairman.

Senator BOXER. Well, I couldn't be happier. I have a great suggestion. Why don't you guys go out and celebrate the holidays together?

[Laughter.]

Senator BOXER. I will buy. I will buy. Honestly. And I just feel you are all so smart, let's get on the same team, and let's do what is right for the country.

Thank you very much. We stand adjourned.

[Whereupon, at 1:35 p.m., the Committee was adjourned.]
[Additional material submitted for the record follows:]

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STATEMENT FOR THE RECORD
BY THE
INSPECTOR GENERAL
U.S. NUCLEAR REGULATORY COMMISSION

TO THE

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

THE NRC INSPECTOR GENERAL REPORT ON THE
"NRC CHAIRMAN'S UNILATERAL DECISION TO TERMINATE NRC'S REVIEW OF
DOE YUCCA MOUNTAIN REPOSITORY LICENSE APPLICATION"

JUNE 14, 2011

STATEMENT FOR THE RECORD

Introduction

Mr. Chairman and members of the Subcommittee, it is my pleasure to appear before you today. I am accompanied today by Mr. Joseph McMillan, Assistant Inspector General for Investigations, and Ms. Rossana Raspa, Senior Level Assistant for Investigative Operations.

As you know, the mission of the Office of the Inspector General (OIG) at the Nuclear Regulatory Commission (NRC) is to assist NRC by ensuring integrity, efficiency, and accountability in the agency's programs that regulate the civilian use of byproduct, source, and special nuclear material in a manner that adequately protects public health and safety and the environment, while promoting the Nation's common defense and security. Specifically, OIG supports NRC by carrying out its mandate to (1) independently and objectively conduct and supervise audits and investigations related to NRC programs and operations; (2) prevent and detect fraud, waste, and abuse; and (3) promote economy, efficiency, and effectiveness in NRC programs and operations. OIG also keeps the NRC Chairman and members of Congress fully and currently informed about problems, recommends corrective actions, and monitors NRC's progress in implementing those actions. My fiscal year 2012 budget request is \$10.860 million and 58 full-time employees, which is consistent with my FY 2011 appropriation.

Background

To perform these activities, OIG employs auditors, analysts, criminal investigators, technical experts, legal counsel, and support personnel. OIG also uses private sector contractors to audit the NRC's financial statements as mandated by the Chief Financial Officers Act and for other audit, investigative, and information technology technical support services.

To fulfill our audit mission, OIG conducts performance, financial, and contract audits. Performance audits focus on NRC administrative and program operations and evaluate the effectiveness and efficiency with which managerial responsibilities are conducted and whether the programs achieve intended results. Financial audits attest to the reasonableness of NRC's financial statements. Contract audits evaluate the cost of goods and services that NRC procured from commercial enterprises. In addition, the audit staff prepare evaluation reports that present OIG perspectives or information on specific topics.

OIG's investigative program carries out its mission by performing investigations relating to the integrity of NRC programs and operations. Most OIG investigations focus on allegations of fraud, waste, and abuse and violations of law or misconduct by NRC employees and contractors. Additionally, OIG investigates allegations of irregularities or abuses in NRC programs and operations with special emphasis on those activities that could adversely impact public health and safety. Periodically, the investigative staff conducts event inquiries, which yield investigative reports documenting the examination of events or agency regulatory actions that do not specifically involve individual misconduct. Instead, these reports identify staff actions that contributed to the occurrence of an event.

Allegation

OIG recently issued a report conveying the results of an investigation into an allegation that the NRC Chairman:

(1) unilaterally and improperly closed out NRC's review of the Department of Energy's (DOE's) Yucca Mountain repository application while the Government was operating under a continuing resolution (CR) during FY 2011, and (2) was purposely preventing the Commission from

completing its ruling on the Atomic Safety Licensing Board's decision to deny DOE's motion to withdraw its Yucca Mountain repository license application from NRC.

The investigation also looked into concerns that were raised about the Chairman's management style toward staff and Commissioners and whether his control of information prevents the other Commissioners from effectively fulfilling their statutory responsibility to address policy matters.

Background and Chronology

The Nuclear Waste Policy Act of 1982, as amended, and the Energy Policy Act of 1992 specify that spent nuclear fuel and high-level radioactive waste will be disposed of underground, in a deep geologic repository. The Nuclear Waste Policy Act names Yucca Mountain as the single candidate site for this potential repository. The act specifically states that NRC will "consider an application for a construction authorization for a repository" and "shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after" the application is submitted.

DOE, which is charged with constructing and operating the repository, submitted its license application on June 3, 2008, and NRC formally accepted it for review in September 2008. This started the 3-year schedule set by Congress for NRC to reach a decision on whether to approve construction. NRC planned, at the end of its technical review, to issue a safety evaluation report (SER) containing its findings on the repository design. The SER would determine whether the proposed facility would meet NRC regulations to protect public health and safety. NRC staff decided to issue the SER in five volumes, and in March 2010 estimated that all volumes could be completed by March 2011.

In February 2010, the Energy Secretary noted during a Senate hearing that the Administration would seek to immediately suspend licensing for the Yucca Mountain repository because it was not a workable option. In March 2010, DOE submitted to the NRC Atomic Safety Licensing Board a motion to withdraw its Yucca Mountain License Application. On June 29, 2010, the Atomic Safety Licensing Board issued a decision that denied DOE's motion to withdraw, concluding that DOE lacked the authority to withdraw the application. The Commission decided to review the board's decision and, in accordance with NRC's process, on August 10, 2010, the Office of Commission Appellate Adjudication submitted adjudicatory SECY paper SECY-10-0102 on the Yucca Mountain matter to the Commission for its consideration.

On September 30, 2010, Congress issued the first in a series of CRs directing Federal agencies generally to spend money at FY 2010 levels, as necessary, to continue projects and activities that were conducted during FY 2010.

On October 4, 2010, the NRC Chief Financial Officer (CFO) and Executive Director for Operations (EDO) issued guidance to staff related to budget execution under the CR period. The memorandum stated that offices were to commit, obligate, and expend funds for ongoing activities at FY 2010 levels, with the exception of the High-Level Waste Program. With regard to the High-Level Waste Program, the memorandum directed staff to continue its activities on the Yucca Mountain license application during the CR period in accordance with the Commission's decisions on the FY 2011 budget. The Commission's decisions on the FY 2011 budget are reflected in the agency's Congressional Budget Justification for FY 2011, which allotted \$10 million for the Yucca Mountain repository to "support work related to the orderly closure of the agency's Yucca Mountain licensing support activities."

Shortly after the issuance of the CR budget guidance memorandum, Chairman Jaczko directed staff working on the Yucca Mountain license application review to stop working on the SER and proceed to orderly closure of the technical review.

Investigation Results

CR Budget Guidance Memorandum

OIG examined the circumstances surrounding the development of the EDO's and CFO's October 4, 2010, CR budget memorandum and learned that the language directing staff to follow FY 2011 budget guidance for High-Level Waste Program activities was based on instruction provided by the Chairman's office. The final language differed from earlier drafts of the memorandum prepared by the EDO's and CFO's offices. Earlier drafts of the memorandum either contained no mention of the Yucca Mountain license application review or directed that the agency would continue its review with any available FY 2010 carryover funds until exhausted.

OIG found that Chairman Jaczko used the FY 2011 CR budget guidance memorandum to initiate NRC's FY 2011 plans to close out its Yucca Mountain license application review even though the FY 2011 budget had not yet been passed. The Chairman's decision to direct the staff to follow the FY 2011 budget guidance was supported by the NRC General Counsel and consistent with the discretion within the Chairman's budget execution authority under the Reorganization Plan No. 1 of 1980 (Reorganization Plan). The Reorganization Plan states that the Chairman determines the use and expenditure of funds of the Commission in accordance with the distribution of appropriated funds according to major programs and purposes approved by the Commission. Chairman Jaczko's decision was also consistent with OMB Circular A-11 guidance to spend prudently during a CR period in a manner that does not impinge on final funding prerogatives of Congress, coupled with the Administration's decision to terminate the

Yucca Mountain repository project. The Chairman's decision was also consistent with his interpretation of the Commission's FY 2011 budget policy decisions, which articulated close-out activities for the High-Level Waste Program.

OIG also found that although the Chairman had the authority to direct staff to follow the FY 2011 budget guidance, he was not forthcoming with the other Commissioners about his intent to stop work on the SER as part of implementing close-out activities. This included stopping work on SER Volume 3 ("Review of Repository Safety After Permanent Closure"), which NRC staff believed to be near completion by the end of FY 2010. OIG learned that the Chairman anticipated that proceeding to close-out in this manner could be controversial and viewed as a policy decision for full Commission consideration. Therefore, prior to directing issuance of the CR budget guidance memorandum, he strategically provided three of the four other Commissioners with varying amounts of information about his intention to proceed to closure and not complete SER Volume 3. He did not provide Commissioner Svinicki with any information about his intentions. Although two of the three Commissioners he spoke with did not fully understand the implications of the CR budget guidance memorandum, the Chairman told the EDO prior to his signing the memorandum that all the Commissioners were informed and supported issuance of the CR budget guidance memorandum, and the Chairman's Chief of Staff told the CFO that he had clearance from the Commission offices to issue the memorandum. In fact, subsequent to the issuance of the CR budget guidance memorandum, a majority of Commissioners disagreed with the outcome of the memorandum, which was the Chairman's direction to stop work on SER Volume 3.

Additionally, a majority of the Commissioners did not think the conditions to proceed to closure had been met. These conditions were articulated in the FY 2011 Congressional Budget Justification as "upon the withdrawal or suspension of the licensing review," the NRC would

begin an orderly closure of the technical review and adjudicatory activities and would document the work and insights gained from the review.

OIG also learned that on October 6, 2010, Commissioner Ostendorff wrote a Commission action memorandum, or COM, to the other Commissioners seeking the Commission's involvement in the Chairman's direction to staff to stop working on the SER. Commissioner Ostendorff proposed that the Commission direct staff to continue to work on the remaining SER volumes at the rate for operations appropriate given the proposed FY 2011 budget as augmented by reprogrammed funds remaining from FY 2010 appropriations. In accordance with Commission procedures, Commissioner Ostendorff needed a majority of the Commission to support his proposal in order for it to become guidance for the staff. However, after the Commissioner issued his memorandum, Chairman Jaczko communicated to Commissioners Magwood and Apostolakis that he expected their continued support. He told both Commissioners that he would not have directed issuance of the CR budget guidance memorandum had they not committed to support him. Despite their view that they had not been fully informed about the Chairman's intent behind the CR budget guidance memorandum, Commissioners Magwood and Apostolakis elected not to participate in voting on Commissioner Ostendorff's COM. Therefore, without a majority, the Commission was unable to move the matter from budget space, within the Chairman's purview, to policy space, within the Commission's purview.

SER Issue

As part of this investigation, OIG reviewed circumstances related to development and issuance of the SER schedule and volumes. OIG learned that between April and May 2010, Office of Nuclear Material Safety and Safeguards staff informed the Chairman that they were ahead of schedule with their work on the SER volumes, and they asked whether they should attempt to issue the volumes at earlier dates than those that had been established in March 2010. The

Chairman responded in a June 2010 memorandum that they should not expedite issuance of the volumes, but should instead maintain the timeline that had been provided to the Commission in March 2010. According to that timeline, Volume 1 would be issued in August 2010, and Volume 3 in November 2010. Volume 1 of the SER was issued as scheduled; however, in October 2010, at the start of the new fiscal year, Chairman Jaczko directed staff to stop working on the remaining SER volumes. Subsequently, the Chairman gave direction to the staff to prepare a document for public release that captures the knowledge gained through the NRC's technical review of DOE's license application but would not contain any of the staff's findings or conclusions.

OIG found that the Chairman's decision to direct staff to stop working on the SER contributes to NRC's inability to meet its statutory obligation under the Nuclear Waste Policy Act to consider DOE's Yucca Mountain repository license application and issue a final decision approving or disapproving issuance of a construction authorization. Other factors preventing the agency from meeting its statutory obligation are the Administration's decision to terminate the Yucca Mountain repository project and decreasing appropriations to NRC for the High-Level Waste Program.

Adjudicatory Voting Process

Because the outcome of the Commission's vote SECY-10-0102 remains an open adjudicatory matter before the Commission, OIG could not assess the substantive reasons that are preventing this matter from finalization. However, OIG reviewed the Commission's adjudicatory SECY paper voting process and assessed the level to which the Commission adhered to its process with regard to SECY-10-0102 and with adjudicatory SECY papers in general.

OIG learned that the Commission has written internal procedures intended to facilitate Commission decisionmaking based on majority rule. For example, Commissioners are expected to vote on adjudicatory SECY papers within 10 business days of receiving the paper. Once a majority of the Commission has voted, those who have not voted are expected to submit a request for an extension, which must, in turn, be approved by a majority of the Commission. The written procedures do not provide details on the process that occurs between the completion of an adjudicatory SECY paper vote and the conduct of an affirmation vote. However, OIG learned that, in practice, an affirmation vote is not held until all of the Commissioners are satisfied with the affirmation notice and order describing the outcome of the adjudicatory vote.

OIG learned that the Office of the Secretary did not enforce adherence to the Commission's adjudicatory voting process with regard to SECY-10-0102 and generally does not enforce the voting process to facilitate completion of adjudicatory matters. With regard to SECY-10-0102, although all participating Commissioners had voted by September 15, 2010, the Chairman did not vote until October 29, 2010. He never requested an extension to vote, therefore, the other Commissioners were not polled to see if they agreed with the delay. OIG also learned that although the Commission was provided a draft affirmation order detailing the status of the Commission's votes 2 days after the Chairman voted, as of the date of OIG's report, the Commission had not held an affirmation vote on the matter, and the draft order continued to sit in deliberation before the Commission for affirmation.

OIG found that the lack of enforcement of and specificity in the Commission's written procedures, coupled with the Commission's practice not to move to affirmation until all Commissioners agree to the affirmation notice and order, allows matters to sit in abeyance

without final Commission action.

Information Flow/Work Environment

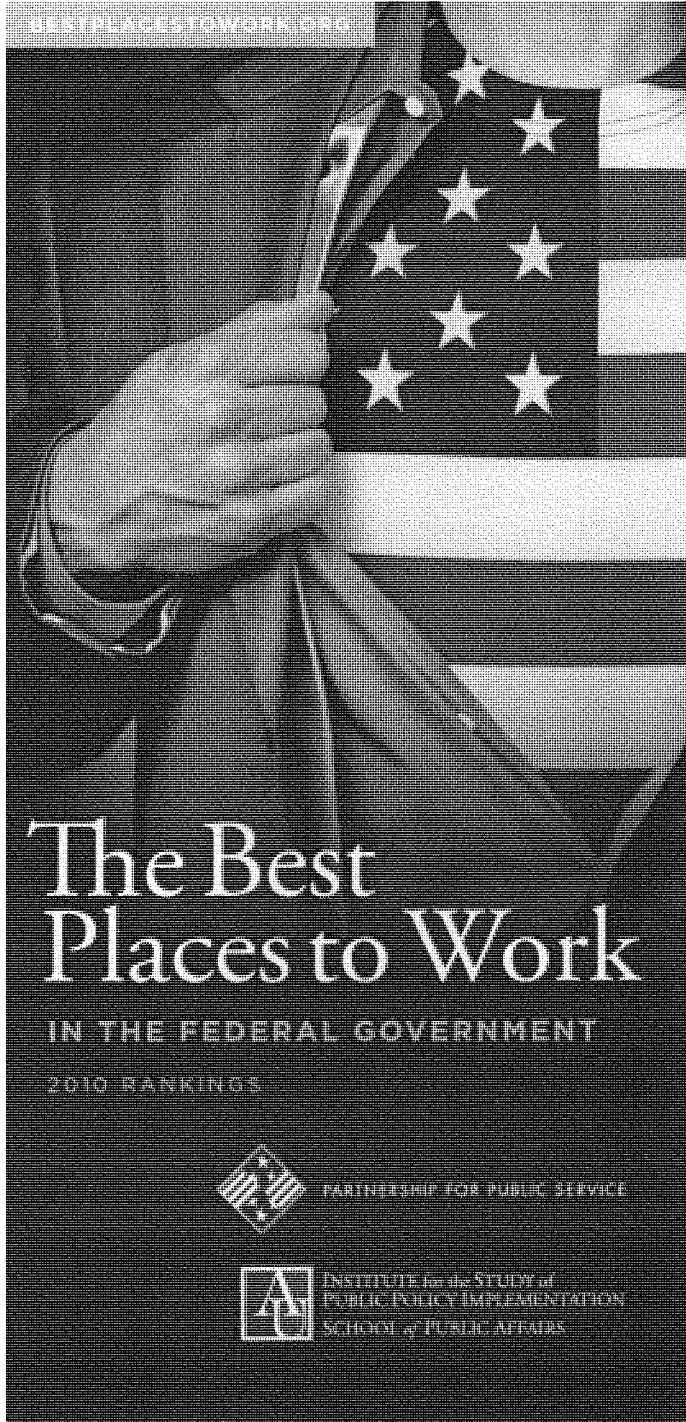
During the course of the investigation, a number of interviewees conveyed their perception that Chairman Jaczko controls and restricts the information available to his fellow Commissioners and noted concerns about his interpersonal style. Senior officials, managers, and staff provided examples that they believed illustrated the Chairman's failure to share with his fellow Commissioners information needed to support their fully informed decisionmaking. Examples included the CR budget guidance memorandum described earlier and the FY 2012 budget process, wherein the Chairman presented his FY 2012 budget proposal to the Commission without supporting documentation from the staff to allow Commissioners to assess how the Chairman's proposal aligns with the staff's budget requests. Previous Chairmen have provided this supporting documentation to the Commission along with their budget proposals to facilitate Commission decisionmaking related to the budget. Chairman Jaczko said his intent in FY 2012 was to help the staff shape a budget that would be more successful in getting through the Commission. Although he believes this is what occurred with the FY 2012 budget, he has since learned from the General Counsel that after his budget was developed and presented to the Commission, the Commissioners were entitled to some of the draft documents.

Other examples cited to illustrate the Chairman's control of information included the Commission agenda planning process and the Chairman's involvement in determining what constitutes a policy versus an administrative matter. In addition, a number of interviewees described instances of behavior by the Chairman that they viewed as unprofessional or manipulative.

The Chairman defended his management style with regard to information flow as aligning with the division of Commission and Chairman responsibilities established by the Reorganization Plan and as necessary for efficiency and effectiveness. He acknowledged using forceful management techniques to accomplish his objectives but maintained that these techniques were necessary to facilitate the work of the Commission.

OIG found that the Chairman controls information provided to the other Commissioners based on his interpretation of his statutory authority as Chairman versus the authority given to the Commission. Because he 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. Ultimately, OIG notes, that all Commissioners have the ability to address any issue they perceive as a policy matter before the Commission by writing a Commission action memorandum to the full Commission and gaining a majority of the Commission's support.

Mr. Chairman, and members of the subcommittee, this concludes my report to you on my office's investigation. I would be pleased to answer any questions at this time.



BEST PLACES TO WORK 2010

The 2010 *Best Places to Work in the Federal Government* rankings offer the most comprehensive assessment of how federal employees perceive their jobs and agencies, providing unvarnished insights into issues ranging from leadership and pay to teamwork and work-life balance.

The rankings, representing the first in-depth look at the views of federal employees during the Obama administration, reveal good news—an increase in the overall satisfaction with the government workplace. But this positive response is leavened by a wide divergence of opinions about the capability of leadership and the conditions at individual agencies and departments.

The *Best Places* government-wide employee satisfaction score for 2010 reached an all-time high of 65 out of 100, representing a 2.7 percent increase from 2009 and a 7.4 percent jump from 2003 when our rankings were first published.

A high level of satisfaction and employee commitment translates into better organizational performance and government effectiveness. When these conditions exist, employees often have a sense of personal accomplishment, believe their talents are well used, that they can develop professionally and are encouraged to innovate.

For the third consecutive time, the Nuclear Regulatory Commission ranked first and the Government Accountability Office placed a close second in the *Best Places* list of 32 large agencies. Perhaps as noteworthy, both agencies improved their scores even though they were already top-ranked. If either had simply maintained their 2009 index score, they would have dropped down the list, suggesting that to stand still is to fall back when it comes to employee satisfaction and commitment.

At the other end of the spectrum, the lowest-rated large agency in 2010 is the National Archives and Records Administration, which was second from the bottom in 2009 and dropped a notch this year even though it showed a slight improvement. Tied for last place is the Department of

FAST FACTS

- The 2010 government-wide *Best Places* index score measuring the satisfaction of federal employees with their jobs and organizations is 65 out of 100, up 2.7 percent from 2009 and an increase of 7.4 percent since the rankings were first launched in 2003.
- Employee satisfaction increased in 68 percent of federal organizations, including 80 percent of large agencies, 69 percent of small agencies and 67 percent of subcomponents.
- The highest-rated workplace categories are in either employee skills/ training/match, teamwork, pay, and training/development.
- The biggest increase in the 2010 ratings was in the effective leadership category regarding employee perceptions of fairness in the workplace, which was up 8.8 percent.
- The 2010 *Best Places* rankings include 293 federal organizations (32 large federal agencies, 34 small agencies and 224 subcomponents) and are based on the responses of more than 263,000 employees.

Housing and Urban Development, which lost ground as other agencies improved.

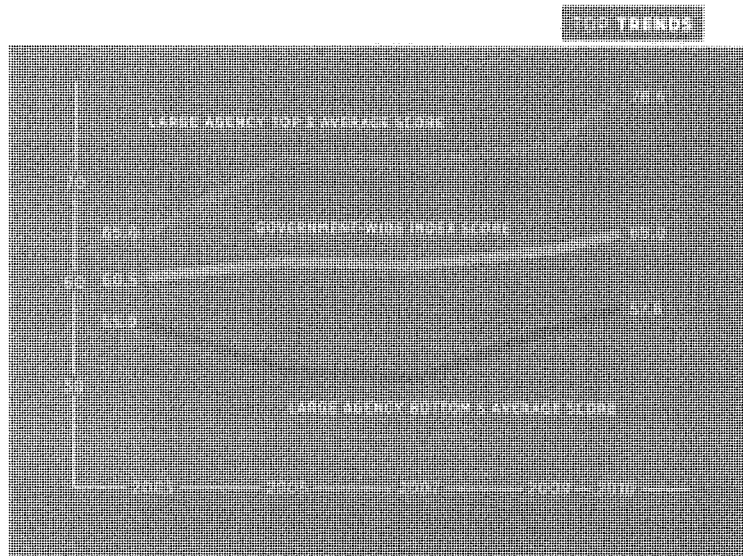
This year, the most improved large federal agencies were the Department of Transportation, which raised its standing among employees by 15.8 percent, and the Department of the Treasury, which increased its score by 8.2 percent. On the flip side, the Securities and Exchange Commission dropped by 6.4 percent—the second survey in a row that employees downgraded the financial regulator.

Although some federal agencies are lagging behind, the improvement by 68 percent of federal organizations demonstrates that a determined focus on good management can have a relatively quick and significant impact in the workplace.

While many factors are involved in shaping how employees view their workplace, the 2010 survey for the fifth time in a row showed the primary driver in the federal space is effective leadership, and in particular, senior leadership. Two other key factors influencing satisfaction revealed by the analysis were a belief by employees that their skills were well-suited to their agency's mission, and a satisfaction with pay.

Employees in the private sector, meanwhile, continued to be more satisfied with their jobs, organizations and supervisors than their counterparts in the federal government. But the attitudes of federal employees regarding these three work-related areas are improving, perhaps a reflection of better government management and the economic realities of today's difficult job market.

The *Best Places* rankings and detailed analysis are based on data from the Federal Employee Viewpoint Survey that was conducted by the Office of Personnel Management during February and March of 2010. The rankings provide a benchmark to measure agency progress, to identify signs of trouble, and to spur our government to improve the way it manages its most important asset—its people.



LARGE AGENCY RANKINGS

Rank	Agency
1	Nuclear Regulatory Commission
2	Government Accountability Office
3	Federal Deposit Insurance Corporation
4	Smithsonian Institution
5	National Aeronautics and Space Administration
6	Social Security Administration
7	Department of State
8	General Services Administration
9	Department of Justice
10	Intelligence Community
11	Environmental Protection Agency
12	Department of the Treasury
13	Department of Commerce
14	Office of Personnel Management
15	Department of the Navy
16	Department of the Army
17	All Departments of Defense (tie)
17	Department of the Interior (tie)
19	Department of the Air Force (tie)
19	Department of Health and Human Services (tie)
21	Department of Veterans Affairs
22	Department of Energy
23	Department of Labor
24	Department of Agriculture (tie)
24	Securities and Exchange Commission (tie)
25	Department of Transportation
27	Equal Employment Opportunity Commission
28	Department of Homeland Security
29	Small Business Administration
30	Department of Education
31	Department of Housing and Urban Development (tie)
31	National Archives and Records Administration (tie)

BY AGENCY

BY AGENCY

1	Nuclear Regulatory Commission
2	Department of Veterans Affairs
2	Social Security Administration

BY AGENCY

1	Nuclear Regulatory Commission
2	National Aeronautics and Space Administration
3	General Services Administration

BY AGENCY

1	Nuclear Regulatory Commission
2	National Aeronautics and Space Administration
3	Department of State

BY AGENCY

1	Nuclear Regulatory Commission
2	General Services Administration
3	National Aeronautics and Space Administration

BY AGENCY

1	Nuclear Regulatory Commission
2	National Aeronautics and Space Administration (2)
2	General Services Administration (2)
4	Environmental Protection Agency

BY DEMOGRAPHIC

BY DEMOGRAPHIC

1	Nuclear Regulatory Commission
2	Government Accountability Office
3	Department of Justice

BY DEMOGRAPHIC

1	Government Accountability Office
2	Nuclear Regulatory Commission (2)
2	Social Security Administration (2)
4	Department of State

BY DEMOGRAPHIC

1	Government Accountability Office
2	Nuclear Regulatory Commission
3	National Aeronautics and Space Administration

BY DEMOGRAPHIC

1	Nuclear Regulatory Commission
2	Government Accountability Office
2	Social Security Administration

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SMALL AGENCY RANKINGS

2009	2010	Agency
1	1	Surface Transportation Board
2	2	Overseas Private Investment Corporation
3	3	Congressional Budget Office
4	4	Federal Mediation and Conciliation Service
5	5	Peace Corps
6	6	National Endowment for the Humanities
7	7	Federal Trade Commission (ex)
7	7	National Transportation Safety Board (ex)
9	8	National Endowment for the Arts
10	10	Commodity Futures Trading Commission
11	11	Merit Systems Protection Board
12	12	Pension Benefit Guaranty Corporation
13	13	National Science Foundation
14	14	Federal Maritime Commission
15	15	Federal Energy Regulatory Commission
16	16	Railroad Retirement Board
17	17	Corporation for National and Community Service
18	18	Court Services and Offender Supervision Agency (ex)
18	18	National Gallery of Art (ex)
20	20	Federal Labor Relations Authority
21	21	Federal Communications Commission
22	22	Millennium Challenge Corporation
23	23	National Credit Union Administration
24	24	U.S. International Trade Commission
25	25	Office of Management and Budget
26	26	Consumer Product Safety Commission
27	27	National Labor Relations Board
28	28	Agency for International Development
29	29	Office of the U.S. Trade Representative
30	30	Federal Election Commission
31	31	Federal Housing Finance Agency
32	32	Broadcasting Board of Governors
33	33	International Boundary and Water Commission
34	34	Selective Service System

BY CATEGORY

1	Federal Mediation and Conciliation Service
2	Surface Transportation Board
3	National Transportation Safety Board
4	Merit Systems Protection Board
5	Federal Trade Commission
1	Surface Transportation Board
2	Merit Systems Protection Board
3	Federal Trade Commission
4	Commodity Futures Trading Commission
5	National Endowment for the Arts
1	Surface Transportation Board
2	Federal Trade Commission
3	Federal Maritime Commission
4	Federal Labor Relations Authority
5	Federal Mediation and Conciliation Service
1	Surface Transportation Board
2	Federal Mediation and Conciliation Service
3	National Endowment for the Arts
4	Federal Energy Regulatory Commission
5	Federal Maritime Commission
1	Federal Mediation and Conciliation Service
2	Surface Transportation Board
3	Federal Labor Relations Authority
4	Commodity Futures Trading Commission
5	Court Services and Offender Supervision Agency
1	Surface Transportation Board
2	Federal Labor Relations Authority
3	Federal Trade Commission
4	National Endowment for the Arts
5	Federal Maritime Commission

View the complete current and historical membership of American embassies.

AGENCY SUBCOMPONENT RANKINGS

1	Environment and Natural Resources Division (DOJ)
2	Army Audit Agency (Army)
3	Office of Inspector General (Treasury)
4	Office of the Comptroller of the Currency (Treasury)
5	Civil Division (DOJ)
6	Bureau of the Public Debt (Treasury)
7	Glenn Research Center (NASA)
8	Executive Office for U.S. Attorneys and U.S. Attorneys' Office (DOJ)
9	Region 1 - Boston (EPA)
10	Region 9 - San Francisco (EPA)
11	John C. Stennis Space Center (NASA)
12	Lindbergh B. Johnson Space Center (NASA)
13	Tax Division (DOJ) (tie)
13	Office of the Inspector General (OPM) (tie)
15	Dryden Flight Research Center (NASA)
16	Office of Thrift Supervision (Treasury)
17	Region 10 - Seattle (EPA)
18	Office of the Inspector General for Tax Administration (Treasury)
19	Federal Highway Administration (DOT)
20	National Cemetery Administration (VA)
21	John F. Kennedy Space Center (NASA)
22	Airbus Division (DOJ)
23	George C. Marshall Space Flight Center (NASA)
24	U.S. Army National Guard Units (Army)
25	All Other Components (Navy)
26	Office of Inspector General (EIS) (tie)
26	Region 3 - Philadelphia (EPA) (tie)
28	Region 2 - New York (EPA)
29	National Institute of Standards and Technology (Commerce)
30	U.S. Military Entrance Processing Command (Army)
31	Langley Research Center (NASA)
32	Region 8 - Denver (EPA)
33	Air Force Special Operations Command (Air Force) (tie)
33	Region 6 - Dallas (EPA) (tie)
33	Office of Naval Research (Navy) (tie)
33	Employee Services (OPM) (tie)

View the complete rankings for all 224 agency subcomponents at bestplacestowork.org.

BY CATEGORY

1	Executive Office for U.S. Attorneys and U.S. Attorney's Office (DOJ)
2	Environment and Natural Resources Division (DOD)
2	National Cemetery Administration (VA)
4	Civil Division (DOJ)
5	Military Health Command (DoD)
Category 2	
1	Office of Inspector General (Treasury)
2	Environment and Natural Resources Division (DOD)
3	Civil Division (DOJ)
4	Office of the Comptroller of the Currency (Treasury) Inc.
4	Office of Inspector General (DOJ) Inc.
Category 3	
1	Environment and Natural Resources Division (DOD)
2	Office of Inspector General (Treasury)
3	Civil Division (DOJ)
4	Lynndon B. Johnson Space Center (NASA)
5	John C. Stennis Space Center (NASA)
Category 4	
1	Office of Inspector General (Treasury)
2	Bureau of the Public Debt (Treasury)
3	Environment and Natural Resources Division (DOD)
4	Civil Division (DOJ)
5	Office of the Inspector General for Tax Administration (Treasury)
Category 5	
1	Office of the Inspector General for Tax Administration (Treasury)
2	Office of Inspector General (Treasury)
3	Office of Inspector General (DOJ)
4	Employee Services (OPM)
5	Federal Law Enforcement Training Center (DOJ)
Category 6	
1	Environment and Natural Resources Division (DOD)
2	Civil Division (DOJ) Inc.
2	Employee Services (OPM) Inc.
4	Lynndon B. Johnson Space Center (NASA)
5	John C. Stennis Space Center (NASA)

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Overall Index Scores

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SCORES BY CATEGORY

... (text) ...

Employee Satisfaction Index

... (text) ...

Leadership

... (text) ...

Employee Leadership

... (text) ...

Support/Support

... (text) ...

Factors

... (text) ...

Overall Index Scores for Employee Satisfaction and Commitment

The overall index score measures the performance of agencies and agencies relative to their competitors and subcomponents. * Score in 2009

Large Agency

Rank	Agency	2010	2009	% Change
1	Nuclear Regulatory Commission	83.8	79.1	5.7%
2	Environmental Protection Agency	82.4	79.5	3.0%
3	Federal Deposit Insurance Corporation	78.3	76.0	2.9%
4	Sequoia National Forest	76.8	75.0	2.4%
5	National Aeronautics and Space Administration	74.2	71.0	4.5%
6	World Wildlife Fund	71.8	67.0	7.6%
7	Department of State	70.9	68.4	3.6%
8	General Services Administration	67.8	67.0	1.2%
9	Department of Justice	66.3	66.0	0.5%
10	Intelligence Community	65.0	62.0	4.8%
11	Environmental Protection Agency	64.5	60.0	7.5%
12	Department of the Treasury	64.1	61.5	4.2%

ABOUT BEST PLACES TO WORK

The *Best Places to Work in the Federal Government** rankings—the most comprehensive and authoritative rating of employee satisfaction and commitment in the federal government—are produced by the Partnership for Public Service and American University's Institute for the Study of Public Policy Implementation (ISPPi).

The Partnership for Public Service is a nonpartisan, nonprofit organization working to revitalize our federal government by inspiring a new generation to serve and by transforming the way government works. The Partnership's workshops, webinars and resources can help you turn your *Best Places* data into workforce solutions that drive real results. To learn more, visit ourpublicservice.org.

ISPPi at American University conducts research and facilitates dialogue among stakeholders in the public policy implementation process: members of Congress, political appointees, career executives, union leaders, academics and consultants. ISPPi along with American University's Key Executive Leadership Programs focuses on increasing leadership capacity among public sector leaders. ISPPi is part of the American University's School of Public Affairs which offers education on the graduate, undergraduate and executive levels in public administration, public policy, political science, organization development and justice. To learn more, visit american.edu/spa/isppi.

METHODOLOGY

The *Best Places* rankings are based on the Office of Personnel Management's 2010 Federal Employee Viewpoint Survey, which included responses from more than 263,000 civil servants. Working with the global management consulting firm Hay Group, the Partnership for Public Service and the Institute for the Study of Public Policy Implementation created a statistical model to transform these raw survey data into an overall measure of workplace satisfaction and commitment, and 10 workplace environment indices. This information was then used to calculate the results for each organization. Small agencies are those independent agencies that have at least 100 but less than 2,000 full-time, permanent employees. Large agencies are those independent agencies or Cabinet departments with 2,000 or more full-time, permanent employees. Finally, statistical analysis was performed to determine the relationship between the workplace dimensions and the overall *Best Places* index score.

The Government Accountability Office, the Federal Deposit Insurance Corporation, the Intelligence Community, the Smithsonian Institution, the Congressional Budget Office, the Millennium Challenge Corporation, the Overseas Private Investment Corporation, the Peace Corps and the Army Audit Agency did not participate in the 2010 OPM survey. In order to participate in *Best Places*, these organizations conducted a comparable survey that included the three index questions. The survey needed to be administered during the same timeframe, and have a 50 percent response rate. These organizations are not ranked on any of the workplace dimension categories. Only GAO participates in the demographic rankings.

"AT A TIME WHEN WE NEED TO RECRUIT A NEW GENERATION TO PUBLIC SERVICE, and there is a renewed focus on quality performance, it is especially important that the Best Places to Work programs measure federal employees' satisfaction and commitment, which are essential to effective government."

U.S. Senator Mark Warner
Virginia

"EMPLOYEE SATISFACTION IS A LEADING INDICATOR OF EFFECTIVE ORGANIZATIONS, and there is no better measure of worker engagement in the federal government than the Best Places to Work."

U.S. Senator Susan Collins
Maine

"THE BEST PLACES TO WORK RANKINGS ARE A 'MUST-READ' for anyone who cares about the federal workforce. They provide job seekers with critical information based on the opinions of federal employees and managers, which is a powerful tool to attract and retain the best and brightest."

U.S. Representative K. Michael Pittenger
North Carolina

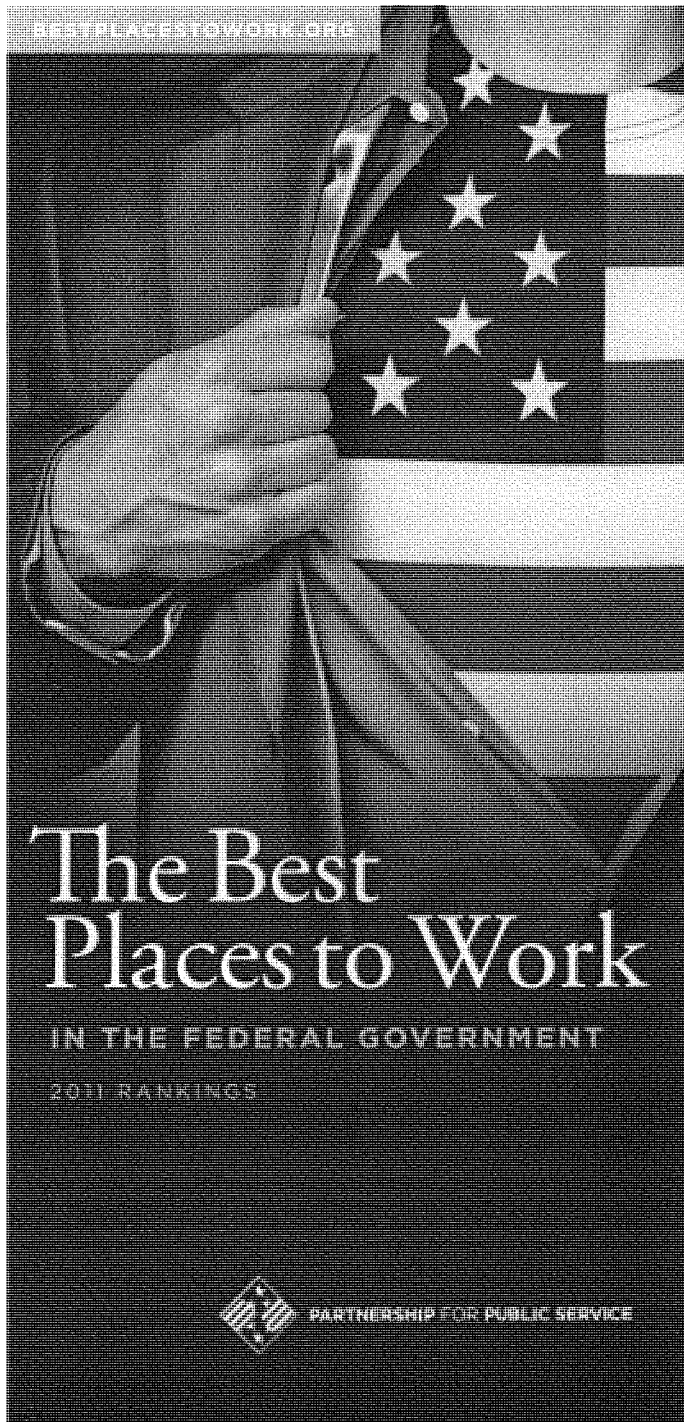
"BY MEASURING THE JOB SATISFACTION OF FEDERAL EMPLOYEES, Best Places offers a powerful incentive for managers to create better workplaces and, consequently, a government that is more responsive to the needs of the public."

Past U.S. Senator Patrick Leahy
Vermont

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BESTPLACESTOWORK.ORG

The Best Places to Work

IN THE FEDERAL GOVERNMENT

2011 RANKINGS



PARTNERSHIP FOR PUBLIC SERVICE

BEST PLACES TO WORK 2011

The 2011 *Best Places to Work in the Federal Government*[®] rankings offer the most comprehensive assessment of how federal employees perceive their jobs and agencies, providing insights into issues ranging from leadership and pay to teamwork and work/life balance. The rankings provide a roadmap for building a more engaged workforce and, ultimately, more effective organizations.

The 2011 results show a decline in government-wide employee satisfaction and commitment from 65 to 64 out of 100, compared to 2010. The 1.5 percent drop is not as steep as one might have expected given the difficult economic and political climate that has led to a federal pay freeze, the national discussion around reduced worker benefits, threats of government shutdowns and the certainty of significant agency budget cuts. In fact, the government-wide score of 64 is still 5.7 percent higher than the score in 2003, when our rankings were first published.

The new rankings show improvement in worker satisfaction scores by only 31 percent of federal organizations, compared with 68 percent last year, demonstrating that 2011 was a challenging year for most agencies. At the same time, the rise in employee satisfaction at some agencies suggests that a determined focus on good leadership can have a positive workplace impact even in tough times.

The Federal Deposit Insurance Corporation (FDIC) ranked number one on this year's *Best Places* list of 33 large agencies, moving up two slots from 2010. The FDIC unseated the Nuclear Regulatory Commission, which ranked second this year after holding the top spot three times in a row. Third place went to the Government Accountability Office, which ranked second in 2010.

At the other end of the spectrum, the lowest-rated large agency for the second consecutive year was the National Archives and Records Administration (NARA). The Department of Housing and Urban Development ranked second from the bottom after being tied for last in 2010, while the Department of Homeland Security placed third from the bottom. All three saw their employee satisfaction scores drop.

FAST FACTS

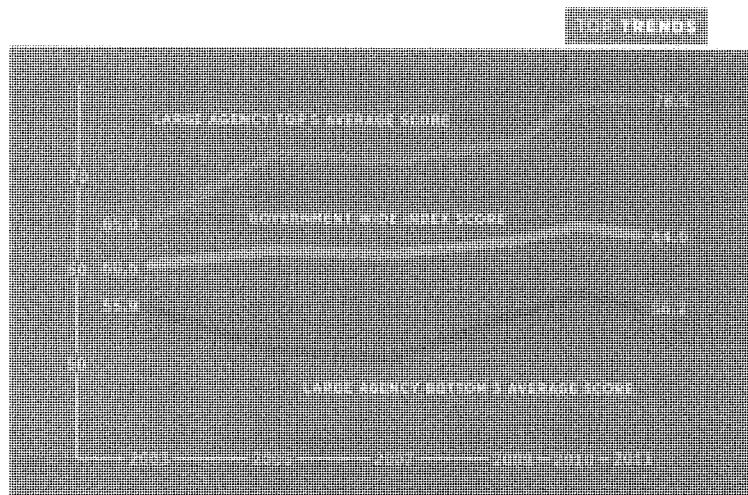
- * The 2011 government-wide *Best Places* index score measuring federal employees' job satisfaction and commitment is 64 out of 100, down 1.5 percent from 2010.
- * Employee satisfaction increased at only 31 percent of the federal organizations, including 22 percent of large agencies, 38 percent of small agencies and 32 percent of subsidiaries.
- * The fastest-improving "Best in Class" workplace categories are, in order, employee aids/training coach programs, training development and work/life balance. The most improved workplace category was support for diversity, which rose up 1.5 percent.
- * The 2011 *Best Places* rankings include 308 federal organizations (33 large federal agencies, 35 small agencies and 240 subsidiaries).

In addition to having the highest satisfaction and commitment score, the FDIC was also the most improved large federal agency, registering an increase of 8.5 percent compared to 2010. It was followed by the Office of Personnel Management (OPM), which jumped from 14th to 9th place in the rankings and raised its standing among employees by 5.3 percent. In contrast, NARA recorded a 7.1 percent decrease in employee satisfaction, the biggest drop among large agencies, and was followed by the Securities and Exchange Commission (SEC) with a 5.9 percent decline. This is the third consecutive that employees gave the SEC lower marks, sinking the financial regulator from 3rd place in 2007 to 27th place today.

While many factors are involved in shaping how employees view their workplace, the 2011 survey for the sixth time in a row showed the primary element that drives worker satisfaction in the federal space is effective leadership, and in particular, senior leadership. Two other key factors influencing satisfaction, revealed by our analysis, were a belief by employees that their skills were well-suited to their agency's mission, and a satisfaction with pay. In 2011, leadership continued to receive low scores from employees, with a government-wide score of 54.9 out of 100. Satisfaction with pay declined 6.1 percent to 59.1, while workers gave high marks (78.6) for the link between skills and mission.

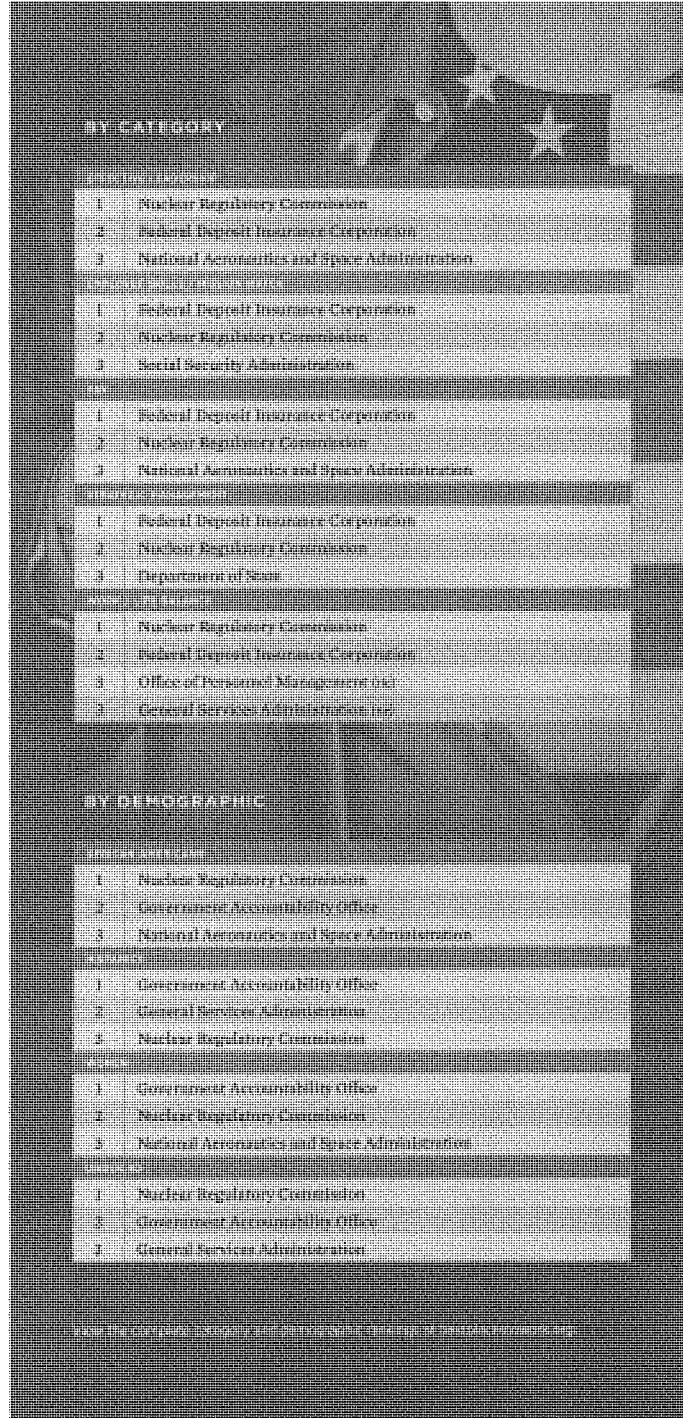
Meanwhile according to Hay Group, employees in the private sector continued to be more satisfied with their jobs, organizations and supervisors than their counterparts in the federal government. While worker satisfaction declined in 2011 for both federal employees and workers in large private companies, the drop-off was slightly less for the private sector.

The *Best Places* rankings are based on data from the Federal Employee Viewpoint Survey conducted by OPM from April 4 through May 31, 2011. More than 266,000 employees responded to the survey. The rankings also incorporate survey data from eight additional agencies and the Intelligence Community. Most importantly, they serve as a benchmark to measure agency progress, to identify signs of trouble and to spur our government leaders to improve the way they manage their most important asset—their employees.



LARGE AGENCY RANKINGS

Rank	Agency
1	Federal Deposit Insurance Corporation
2	Nuclear Regulatory Commission
3	Government Accountability Office
4	Smithsonian Institution
5	National Aeronautics and Space Administration
6	Social Security Administration
7	Department of State
8	Intelligence Community
9	Office of Personnel Management
10	General Services Administration
11	Department of Justice
12	Environmental Protection Agency (tie)
12	Department of the Treasury (tie)
14	Department of Commerce
15	Department of the Navy
16	Department of the Army
17	Department of Veterans Affairs
18	Department of the Interior (tie)
18	Department of the Air Force (tie)
20	Department of Health and Human Services
21	Equal Employment Opportunity Commission
22	Office of the Secretary of Defense, Joint Staff, Defense Agencies and Department of Defense Field Activities
23	Department of Agriculture
24	Department of Labor
25	Department of Energy
26	Department of Transportation
27	Securities and Exchange Commission
28	Small Business Administration
29	Department of Education
30	U.S. Agency for International Development
31	Department of Homeland Security
32	Department of Housing and Urban Development
33	National Archives and Records Administration



SMALL AGENCY RANKINGS

1	Surface Transportation Board
2	Defense Nuclear Facilities Safety Board
3	Federal Mediation and Conciliation Service
4	Peace Corps
5	Farm Credit Administration
6	Overseas Private Investment Corporation
7	Federal Labor Relations Authority
8	Commodity Futures Trading Commission
9	National Endowment for the Humanities
10	Federal Trade Commission
11	Maritime Safety Board
12	Federal Energy Regulatory Commission
13	National Transportation Safety Board
14	Railroad Retirement Board
15	Consumer Product Safety Commission
16	National Credit Union Administration
17	Federal Communications Commission
18	National Science Foundation
19	Court Services and Offender Supervision Agency
20	Pension Benefit Guaranty Corporation
21	National Endowment for the Arts
22	Corporation for National and Community Service
23	National Gallery of Art
24	National Labor Relations Board
25	Selective Service System
26	U.S. International Trade Commission
27	Office of Management and Budget
28	Millennium Challenge Corporation
29	Federal Maritime Commission
30	Export-Import Bank of the United States
31	International Boundary and Water Commission
32	Brandywine Board of Governors
33	Federal Housing Finance Agency
34	Federal Election Commission
35	Office of the U.S. Trade Representative

BY CATEGORY

1	Surface Transportation Board
2	Defense Nuclear Facilities Safety Board
3	Federal Labor Relations Authority
4	Oversight Private Investment Corporation
5	Federal Trade Commission
1	Surface Transportation Board
2	Federal Mediation and Conciliation Service
3	Defense Nuclear Facilities Safety Board
4	Federal Labor Relations Authority
5	Mart Systems Protection Board
1	Defense Nuclear Facilities Safety Board
2	Surface Transportation Board
3	Federal Mediation and Conciliation Service
4	National Endowment for the Arts
5	Commodity Futures Trading Commission
1	Surface Transportation Board
2	Oversight Private Investment Corporation
3	Defense Nuclear Facilities Safety Board
4	Federal Trade Commission
5	Peace Corps
1	Defense Nuclear Facilities Safety Board
2	Surface Transportation Board
3	Federal Mediation and Conciliation Service
4	Federal Energy Regulatory Commission
5	National Endowment for the Humanities
1	Surface Transportation Board
2	Federal Labor Relations Authority
3	Defense Nuclear Facilities Safety Board
4	Peace Corps
5	Oversight Private Investment Corporation

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AGENCY SUBCOMPONENT RANKINGS

1	Environment and Natural Resources Division (DOE)
2	Army Audit Agency (Army) (ac)
3	Civil Division (DOJ) (ac)
4	John C. Stennis Space Center (NASA) (ac)
5	Tax Division (DOJ)
6	Office of the Comptroller of the Currency (Treasury)
7	Office of the Inspector General (DFPM)
8	Region 3 - Philadelphia (EPA)
9	Region 1 - Boston (EPA)
10	Bureau of the Public Debt (Treasury)
11	Goddard Space Flight Center (NASA)
12	Federal Highway Administration (DOT)
13	Largely Research Center (NASA)
14	Region 9 - San Francisco (EPA)
15	Office of Inspector General (Treasury)
16	Office of the Inspector General for Tax Administration (Treasury)
17	Executive Office of U.S. Attorneys and U.S. Attorneys (DOJ)
18	Drug Enforcement Administration (DOJ)
19	Patent and Trademark Office (Commerce)
20	Administration On Aging (HHS)
21	Lynndon B. Johnson Space Center (NASA)
22	Region 6 - Dallas (EPA)
23	Region 8 - Denver (EPA) (ac)
24	Drayden Flight Research Center (NASA) (ac)
25	Region 10 - Seattle (EPA)
26	U.S. Marshals Service (DOJ)
27	John F. Kennedy Space Center (NASA)
28	Region 2 - New York (EPA)
29	Office of Inspector General (EIS) (ac)
29	Office of Naval Research (Navy) (ac)
31	U.S. Army Acquisition Support Center (Army)
32	George C. Marshall Space Flight Center (NASA)
33	National Cemetery Administration (VA)

View the complete rankings for all 240 agency subcomponents at bestplacetowork.org.

BY CATEGORY

1	Office of Inspector General (Treasury)
2	John C. Stennis Space Center (NASA)
3	Environment and Natural Resources Division (DOE)
4	Lyndon B. Johnson Space Center (NASA)
5	Civil Division (DOJ)
1	Executive Office of U.S. Attorneys and U.S. Attorneys (DOJ)
2	Goddard Space Flight Center (NASA)
3	Civil Division (DOJ) (a)
3	John C. Stennis Space Center (NASA) (a)
5	Tax Division (DOE)
6	National Cemetery Administration (VA)
1	National Drug Intelligence Center (DOJ)
2	Office of Inspector General (Interior)
3	Office of Inspector General (OSM)
4	Office of the Inspector General for Tax Administration (Treasury)
5	Employee Services (OPM)
1	Office of Inspector General (Treasury)
2	Office of the Comptroller of the Currency (Treasury)
3	Civil Division (DOJ)
4	Federal Highway Administration (DOT)
5	John C. Stennis Space Center (NASA)
1	Office of Inspector General (Treasury)
2	John C. Stennis Space Center (NASA)
3	Bureau of the Public Debt (Treasury)
4	Office of Inspector General (Interior)
5	Office of Inspector General (DOJ)
1	Environment and Natural Resources Division (DOE)
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3	Lyndon B. Johnson Space Center (NASA)
4	John C. Stennis Space Center (NASA)
5	Goddard Space Flight Center (NASA)

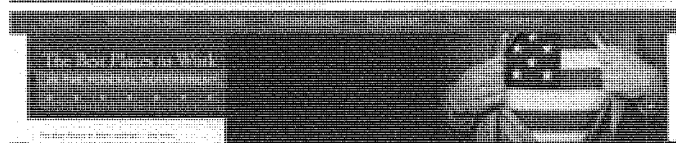
View this content in the context of the entire document at <https://www.gao.gov>

FIND MORE ONLINE

Visit bestplaceswork.com to access the complete 2011 rankings, download customized reports and conduct side-by-side comparisons of agencies and their subcomponents.

Here is what you will find online:

- The **complete rankings** for the 25 largest Cabinet departments and independent agencies, 25 small agencies, and more than 200 organizations within those agencies, with **detailed profiles** of each.
- **Insightful analysis** of what the rankings mean, with **trend data** to help you understand where the agencies stand and where they are going.
- Rankings focused on **topics that matter** to you, such as effective leadership, pay, work-life balance and support for diversity.
- **Agency satisfaction surveys** broken down by **demographic groupings** including age, gender and minority status.
- Capabilities that allow you to generate **customized reports** by selecting the agency features most important to you. You can also conduct **side-by-side comparisons** of best agencies or their subcomponents grouped in various categories.
- A **"For Job Seekers"** section with the information you need to understand the federal hiring process, find the right job and make your application stand out!
- A **"For Agencies"** section with resources that can help you turn your Best Places to Work data into workplace solutions that create real results.



Overall Index Scores for Employee Satisfaction and Commitment

The overall index scores measure the performance of agencies and their subcomponents selected by employees on satisfaction and commitment.

Find an Agency:

Compare up to 3 Specific Agencies

Overall Index Scores

Most Improved Agencies and Subcomponents

SCORES BY CATEGORY

Employee Satisfaction Index

Strategic Management

Teamwork

Effective Leadership

Engagement

Payroll

Rank	Agency	2011	2010	% Change
1	Federal Reserve System - Corporation	89.6	88.5	1.2
2	Sheldon Reservoir Corporation	88.1	86.1	2.3
3	Economic Development Office	86.6	85.5	1.3
4	Mathematics Institute	86.0	84.9	1.3
5	National Archives and Records Administration	85.5	84.0	1.8
6	Small Business Administration	84.2	83.0	1.5
7	Department of State	83.9	81.9	1.9
8	Small Business Administration	83.2	81.0	2.7
9	Office of Personnel Management	83.1	82.8	0.3
10	General Services Administration	82.1	81.0	1.4
11	Department of Justice	81.9	80.3	1.9
12	Environmental Protection Agency	81.8	80.0	1.8

ABOUT BEST PLACES TO WORK

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METHODOLOGY

The vast majority of the data used to develop the *Best Places to Work in the Federal Government* rankings was collected by the Office of Personnel Management's (OPM) Federal Employee Viewpoint Survey (FEVS). The FEVS was conducted April 4 through May 31, 2011, and administered online to 540,727 full-time, permanent executive branch employees. The survey was completed by 266,376 federal workers, for a response rate of 49.3 percent. Participating agencies comprise 97 percent of the executive branch workforce. The rankings also include responses from nearly 10,000 additional employees at eight agencies who were surveyed at the same time and had a response rate of more than 50 percent. In addition, the rankings incorporate responses from employees of the Intelligence Community, which conducted its own similar surveys, but did not report the number of respondents due to classification restrictions.

Large agencies listed in the rankings are those organizations with more than 2,000 full-time permanent employees. Small agencies are those with at least 100, but fewer than 2,000 full-time, permanent employees.

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Illinois

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