

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

May 5, 2011

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shimkus:

I am writing in regards to inflammatory comments you made about my questions to the Nuclear Regulatory Commission (NRC) during yesterday's joint hearing before the Subcommittees on Energy and Power and Environment and the Economy.

You have publicly accused NRC Chairman Jaczko of "illegal" conduct and engaging in "politics at its worst" for halting the license processing of the Yucca Mountain nuclear waste depository. In yesterday's hearing, I asked Chairman Jaczko to respond to your allegations and to evidence bearing on them. I asked these questions because the Committee and the public should have the opportunity to weigh both the evidence and Chairman Jaczko's response.

Your objection to my questions appears to be based on a misunderstanding of your role as Chairman. As Chairman, you have many powers. You get to call hearings and invite witnesses. But your authority does not extend to censoring the content of Committee members' questions. Each member has the right to review the record before the Committee and ask any relevant questions.

On March 31, you and Chairman Upton requested documents from the NRC as well as the Department of Energy pertaining to the decision to close down the Yucca Mountain nuclear waste depository. Both agencies have produced thousands of pages of documents to the Committee in response to this request. My staff reviewed all of the documents produced by NRC and the Commissioners in advance of this hearing.

During review of these documents, my staff identified many documents that supported the actions of Chairman Jaczko. My staff also identified documents that showed that an NRC

employee, who is responsible for administering one of the NRC's databases, had expressed concerns similar to yours about the legality and motivations of Chairman Jaczko's actions. Exercising my role as a member of the Committee, I asked Chairman Jaczko to respond to your allegations and two e-mails written by this employee.

You have stated that my questions undermined the investigation. I do not see how this could possibly be the case. My questions advanced the investigation by giving Chairman Jaczko the opportunity to respond to allegations that his actions were improper. Moreover, the documents in question were provided to the Committee by Chairman Jaczko and Chairman Jaczko confirmed in his answers yesterday that he was aware of the documents prior to my questioning.¹

There is an irony in your comments objecting to my references to the two e-mails. These e-mails are part of the record of the NRC's actions. Just last year, you and other members requested that the NRC make public "all relevant documents" related to DOE's motion to withdraw the Yucca license application.² You stated: "Given the significant ramifications of DOE's actions, it is in the public's interest to be fully informed of the entire decision-making process."³ If the NRC had complied with your request, the e-mails I discussed yesterday, as well as a large amount of other documents, would have already been made public.

I would also note that I believe you risk undermining the investigation by appearing to pre-judge its outcome. You stated yesterday that the Yucca investigation "only started last week."⁴ But even though your investigation has just started, you've already announced your conclusions regarding Yucca on several occasions over the last four months. For example:

- On May 2, 2011, you called the decision to halt the NRC's review of the Yucca Mountain license application "politics at its worst at its highest levels." You also stated: "First of all, we think it is illegal for the NRC and for Obama through the secretary of energy to

¹ I do recognize that there can be circumstances when it is appropriate to keep specific information confidential during a congressional investigation. But such circumstances are unusual and need far more justification than a generic assertion that the use of any documents in questioning would compromise an investigation. No such specific justification was provided – or could be provided – in this case.

² Letter to Chairman Gregory Jaczko, July 15, 2010.

³ *Id.*

⁴ *Waxman draws GOP fire for releasing NRC emails on Yucca Mountain*, E&E News (May 4, 2011).

The Honorable John Shimkus
May 5, 2011
Page 3

stop funding Yucca Mountain, and secondly, we really question the legality of the NRC delaying its vote.”⁵

- On April 11, 2011, you told *St. Louis Today*: “What I think has happened is that they have illegally closed Yucca Mountain.”⁶
- On January 19, 2011, you told *The Hill* that you intended to ask whether the decision to “pull the plug” on Yucca Mountain was “all politics.” You stated that you thought people already knew the answer, but “you should go through the process of asking the questions.”⁷

As members of Congress, we have a duty to review the documents provided to the Committee and to ask questions based on the documents. That is the approach I took yesterday and will take in future hearings. What we should avoid doing is drawing conclusions about an investigation without first reviewing those documents, which is apparently what you have done.

Sincerely,



Henry A. Waxman
Ranking Member

cc: The Honorable Fred Upton
Chairman
Committee on Energy and Commerce

⁵ *Congress expresses Concern about Yucca Mountain Closure*, The Daily Caller (May 2, 2011).

⁶ *Shimkus says Yucca Mountain Trip a Go Despite Cost Warnings*, St. Louis Today (Apr. 11, 2011).

⁷ *Energy Secretary faces new tests for agenda*, The Hill (Jan. 19, 2011).