

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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June 13, 2011

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton:

I received the letter you and Subcommittee Chairman Shimkus sent to me and Subcommittee Ranking Member Green on June 8, 2011, regarding the Committee's investigation into Yucca Mountain. It contains multiple distortions and inaccuracies.

One example is your assertion that I may have engaged in "obstruction of this investigation" because I asked NRC Chairman Gregory Jaczko about documents questioning his decision to terminate review of the Yucca Mountain waste depository. Here are the facts.

In advance of the May 4 hearing, my staff informed your staff of my intention to ask Chairman Jaczko about two e-mails written by the Administrator for the NRC Licensing Support Network. These e-mails asserted that Mr. Jaczko's decision was illegal and politically motivated. Since members have the right to review documents and ask witnesses questions about the documents, this heads up was a courtesy, not an obligation on my part.

Your staff objected to their release, writing in an e-mail: "These are internal documents. We have not reviewed." My staff responded by pointing out that your staff "had the documents as long as we have had them" and that "[t]hey raise serious allegations" that "Rep. Waxman would like to ask about." Your staff then responded: "This is Chairman Upton's ongoing investigation, and using these documents now will interfere/obstruct with that investigation. ... We need to talk with you before the hearing."

As requested, our staffs did talk before the hearing, at which time my staff asked your staff to explain how use of the two e-mails could obstruct the investigation. Your investigative staff was unable to provide any explanation beyond speculation that release might affect potential future witness interviews.

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I appropriately rejected your staff's request. Asking a member to refrain from using Committee documents is highly unusual and should be supported by compelling reasons. The explanation that "we have not reviewed" the documents and speculation without any substantiating evidence that release could deter unknown potential whistleblowers does not meet this standard. In effect, your staff was making the untenable assertion that you have the right to prevent members for using documents you have not reviewed. Chairmen have no such right.

Nonetheless, before I used the documents in the hearing, my staff proposed a compromise to your staff. I would ask about the documents, but not release them to the public. Your general counsel characterized this approach as a "reasonable accommodation." I then followed this approach at the hearing. Your subsequent use of the word "obstruction" to characterize my actions therefore came as a great surprise.

The rest of your letter is filled with similar mischaracterizations, including an unfounded allegation that I have proposed to establish a double-standard regarding witness interviews.

I do not oppose an investigation into Yucca Mountain, but any investigation we conduct should be fair and impartial. Excluding members of the minority from interviews of fact witnesses is partisan and contrary to the precedents of this Committee. In fact, in my long oversight experience, I have encountered only one chairman who tried to exclude the minority from fact witness interviews, and even he relented and allowed minority participation after I protested the exclusion.

I do not believe the Dan Burton model is one this Committee should emulate.

Sincerely,



Henry A. Waxman
Ranking Member

cc: The Honorable Gene Green
Ranking Member
Subcommittee on Environment and the Economy

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy