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1 {York Stenographic Services, Inc.}

2 RPTS BROWN

3 HIF165.180

4 HEARING ON ``THE NRC INSPECTOR GENERAL REPORT ON THE 'NRC
5 CHAIRMAN'S UNILATERAL DECISION TO TERMINATE NRC'S REVIEW OF
6 THE DOE YUCCA MOUNTAIN REPOSITORY LICENSE APPLICATION''
7 TUESDAY, JUNE 14, 2011
8 House of Representatives,
9 Subcommittee on Environment and the Economy
10 Committee on Energy and Commerce
11 Washington, D.C.

12 The Subcommittee met, pursuant to call, at 10:10 a.m.,
13 in Room 2123 of the Rayburn House Office Building, Hon. John
14 Shimkus [Chairman of the Subcommittee] presiding.

15 Members present: Representatives Shimkus, Murphy,
16 Whitfield, Pitts, Bass, Latta, McMorris Rodgers, Harper,
17 Cassidy, Gardner, Barton, Upton (ex officio), Markey, Green,
18 DeGette, and Waxman (ex officio).

19 Staff present: Carl Anderson, Counsel, Oversight; Gary
20 Andres, Staff Director; Charlotte Baker, Press Secretary;
21 Michael Beckerman; Deputy Staff Director; Sean Bonyun, Deputy
22 Communications Director; Anita Bradley, Senior Policy Advisor
23 to Chairman Emeritus; Andy Duberstein, Special Assistant to
24 Chairman Upton; Todd Harrison, Chief Counsel,
25 Oversight/Investigations; Heidi King, Chief Economist; Dave
26 McCarthy, Chief Counsel, Environment/Economy; Carly
27 McWilliams, Legislative Clerk; Andrew Powaleny, Press
28 Assistant; Chris Sarley, Policy Coordinator, Environment &
29 Economy; Peter Spencer, Professional Staff Member, Oversight;
30 Phil Barnett, Democratic Staff Director; Tiffany Benjamin,
31 Democratic Investigative Counsel; Alison Cassady, Democratic
32 Senior Professional Staff Member; Greg Dotson, Democratic
33 Energy and Environment Staff Director; and Caitlin Haberman,
34 Democratic Policy Analyst.

|
35 Mr. {Shimkus.} The hearing will come to order. The
36 chair recognizes himself for 5 minutes.

37 Today, we take another step in understanding the
38 management breakdown at the NRC. I welcome our witness, Mr.
39 Bell, and I thank him for his professionalism. He started
40 this review last October at the request of Chairman Upton and
41 Mr. Whitfield. His work is both thorough and timely.

42 Having read the entire report, I am struck by three
43 problems at the NRC. First is the inefficiency. It is
44 unbelievable that 1 week after the Nuclear Waste Policy Act
45 says that the NRC must either approve or deny the license
46 application or formally notify Congress as to why it needs
47 more time, the Commission cannot even reach the question of
48 whether the application is even alive. One year ago, the
49 Atomic Safety and Licensing Board ruled that DOE has no
50 authority to withdraw the application, and the NRC must
51 continue to review it. Less than 2 months later, the
52 question was put to a vote of the full Commission. On August
53 10, Commissioner Apostolakis abstained; on August 25 and 26
54 Commissioners Sviniki, Jaczko, and Ostendorf voted. Then,
55 August 30, Chairman Jaczko retracted his vote. Then,
56 September 15, Commissioner Magwood voted. Then, October 29,
57 Chairman Jaczko voted again. But somehow 10 months after all

58 that the vote is still not over. You don't need Internal
59 Commission Procedures to see that it has been a horribly
60 inefficient process, and according to Mr. Bell's report, we
61 have no one to blame except Chairman Jaczko.

62 But there are internal commissioner procedures.
63 Commissioners are to vote within 10 business days; once a
64 quorum has voted, permission to vote late may be granted by a
65 majority of the Commission, and a delay in affirming the vote
66 and promulgating the order may only be granted by a majority
67 of the Commission. None of that has been followed. It is
68 the Chairman's duty to make certain it is followed. Parties
69 to the action rely on the Commission to follow its own rules
70 and keep the trains running on time. The Chairman's neglect
71 of this duty alone is shocking as it denies to the parties of
72 interest a full, timely determination.

73 But once you read further in the report, it becomes
74 clear that the problems are worse than just inefficiency and
75 even worse than neglect of duty. There is outright
76 malfeasance. The report is replete with instances of
77 Chairman Jaczko deliberately misleading both his fellow
78 commissioners and senior staff at the NRC. And he knowingly
79 withheld crucial information from his fellow Commissioners
80 even though the federal statute requires that all
81 commissioners have access to all information. In some

82 instances, Chairman Jaczko manipulated the process through
83 outright false statements to prevent his full commissioners
84 from understanding the implications of his actions and
85 omissions. When confronted by one commissioner about this,
86 Chairman Jaczko merely insulted his colleague by
87 sarcastically retorting, ``You should have asked.''

88 I hope all members study Mr. Bell's June 6 report
89 carefully and take time today to seek any clarifications.
90 This situation warrants our attention and best judgment.

91 The gentleman then yields back his time. The chair
92 recognizes the ranking member, Mr. Green, for 5 minutes.

93 [The prepared statement of Mr. Shimkus follows:]

94 ***** COMMITTEE INSERT *****

|
95 Mr. {Green.} Thank you, Mr. Chairman, for holding this
96 hearing today, and thank Mr. Bell for appearing before the
97 committee to discuss your report entitled, ``NRC Chairman's
98 Unilateral Decision to Terminate NRC's Review of the DOE
99 Yucca Mountain Repository License Application.''

100 There has been a lot of discussion in this committee on
101 the decision by the administration not to proceed with Yucca
102 Mountain, and I have stated several times before the U.S.
103 alone produced 806 billion kilowatt hours of nuclear power in
104 2008 making us the biggest producer of nuclear power in the
105 world. Now, 25 years later, \$15 billion in rate-payers fees
106 and income taxes, we are closing our only long-term solution
107 for nuclear waste. The President has said he supports
108 investments in alternative forms of energy, and Secretary Chu
109 has testified before this committee that we would be unable
110 to meet the President's goals if we do not continue to invest
111 in nuclear power.

112 As we look forward and focus on investing more in
113 nuclear power, we still have nuclear waste. Even if we have
114 better short-term storage than we do now, we still need
115 somewhere to put the waste 50 or 1,000 years from now.

116 Today, we will be discussing the NRC's Inspector
117 General's Report on the NRC chair's decision to terminate the

118 NRC's review of Yucca Mountain. Many allegations have been
119 made on the legality of the NRC chair's decision to terminate
120 the NRC's review. This report evaluated two allegations that
121 one, the chairman unilaterally improperly closed the NRC
122 review of Yucca Mountain application while the government was
123 still operating under a continuing resolution in fiscal year
124 2011; and two, the chairman is preventing the Commission from
125 ruling on NRC licensing board's decision to deny the DOE's
126 motion to withdraw the Yucca application.

127 The Inspector General's report found that Chairman
128 Jaczko had not been forthcoming with all the commissioners
129 but that ultimately he acted within his authority as NRC
130 chair and none of which suggests the NRC chair violated the
131 law. The report does not review whether or not the actual
132 decision to close Yucca was appropriate. The report does
133 shed some light on the obvious internal issues within NRC
134 that should be evaluated and addressed.

135 And just on a personal note, it is frustrating, our
136 country being the largest emitter of nuclear waste in the
137 world and we are seeing us literally eclipsed by countries
138 who do not have as much nuclear power as we do. And it is
139 frustrating after all these years.

140 With that, again, I want to thank Mr. Bell for appearing
141 before the committee. I look forward to hearing your

142 testimony. And again, thank you, Mr. Chairman. I yield back
143 my time.

144 [The prepared statement of Mr. Green follows:]

145 ***** COMMITTEE INSERT *****

|
146 Mr. {Shimkus.} The gentleman yields back his time. The
147 chair now recognizes the chairman of the full committee, Mr.
148 Upton, for 5 minutes.

149 The {Chairman.} Thank you, Mr. Chairman.

150 Developing a safe, permanent storage site for spent
151 nuclear fuel is indeed essential to energy security as well
152 as our national security, and that is not and should not be
153 treated as a partisan issue. So I commend and thank our
154 witnesses for their efforts to provide an objective look at
155 the inner workings of this key agency. The more we learn
156 about NRC's current leadership, the greater our concern about
157 the apparent breakdown in the Agency's operations, departure
158 from nonpartisan tradition, and disregard for the decades of
159 technical expertise and billions of dollars invested.

160 Justice delayed is justice denied. And it has been a
161 year since states and other affected parties went to court
162 seeking a ruling on the license application for the
163 repository at Yucca. The Atomic Safety and Licensing Board
164 ruled that the NRC must consider and vote on DOE's
165 application. Yet the Commission still has not yet taken
166 final action. And after a year in limbo, it now appears that
167 the NRC Chair Jaczko devised a complex, calculated strategy
168 to kill the license application without consideration by the

169 Commission.

170 Consumers have been paying into the Nuclear Waste Fund
171 since 1983 with a promise of something in return: a permanent
172 place to send the spent fuel away from the reactor sites.
173 When the license application was finally filed 3 years ago,
174 we grew more confident. The Act said that in 3 years the NRC
175 would grant the license or explain to Congress why they
176 needed more time. Instead, NRC won't even give a straight
177 answer about whether the application is still alive.

178 And it is not just nuclear power consumers who are
179 cheated. It is taxpayers in every State including Nevada who
180 are paying out judgments to plant operators because the DOE
181 is late accepting the waste. GAO reports that the taxpayers
182 are on the hook for an additional \$15.4 billion--on top of
183 the \$15 billion already spent on the project--and that is the
184 liability if DOE opens Yucca by 2020. If not, it rises
185 another half-billion dollars every year.

186 The circumstances surrounding this administration's rush
187 to pull the plug on Yucca are alarming as much as they are
188 disappointing. We have an administration that apparently
189 wants to erase the visionary effort launched by President
190 Reagan, casting aside 3 decades of scientific research,
191 bipartisan collaboration, and a fortune invested to start
192 from scratch no matter what the cost or consequences to our

193 national security.

194 Despite this moment of dysfunction at the top, the NRC's
195 intrinsic value to the U.S. lies in the expertise and
196 extraordinary dedication of its highly professional staff,
197 including our witnesses today. To them we repeat: we will do
198 what we can to rescue the Agency from the ditch that some
199 have driven you into. And to consumers and taxpayers across
200 America: we will get the NRC to focus once again on its
201 statutory mission to serve all the people instead of,
202 perhaps, the chairman's political patrons.

203 And I yield to Mr. Whitfield.

204 [The prepared statement of Mr. Upton follows:]

205 ***** COMMITTEE INSERT *****

|
206 Mr. {Whitfield.} Thank you very much.

207 In January 2009, President Obama made this statement:

208 ``Let me say as simply as I can, transparency and the rule of
209 law will be the touchstone of this Presidency.'' And yet
210 when you read the Inspector General's report of Chairman
211 Jaczko's actions, you see words like ``misleading,''
212 ``withholding information,'' ``false statements.'' That is
213 not the type of transparency that we need in America today.

214 And I would like to reiterate what Chairman Upton said.
215 This is more than just about Chairman Jaczko. This is about
216 the American people and the American taxpayer who have
217 already spent over \$10 billion preparing Yucca Mountain who
218 now have been sued by utility companies and owe them an
219 additional \$15 billion. And that is increasing every year
220 because the government cannot meet its obligations, primarily
221 because of one person at the Nuclear Regulatory Commission
222 whose personal objective is to close this project at Yucca
223 Mountain. And so I think it is an abuse of his authority and
224 I look forward to the testimony of all the witnesses today.

225 I yield back.

226 [The prepared statement of Mr. Whitfield follows:]

227 ***** COMMITTEE INSERT *****

|
228 Mr. {Shimkus.} The gentleman yields back his time. The
229 chair recognizes the chairman emeritus, Mr. Waxman, for 5
230 minutes.

231 Mr. {Waxman.} Well, thank you, Mr. Chairman. This is
232 the third hearing this subcommittee has held on the closure
233 of the Yucca Mountain Waste Repository. Today, we will hear
234 from the Nuclear Regulatory Commission's Inspector General,
235 who has recently issued a report on allegations that the NRC
236 chairman's actions relating to the closure were improper.

237 The primary finding of the Inspector General's report
238 was that Chairman Jaczko's ambitions have been consistent
239 with established law, OMB guidance, and his authority as
240 chairman. This finding is very different from what Chairman
241 Shimkus has been saying for months. In the press and in this
242 hearing room he has repeatedly stated that Chairman Jaczko
243 has been acting illegally. This is, of course, the problem
244 with prejudging and announcing the outcome of an
245 investigation before it has started.

246 Despite the rhetoric we have heard over the past months,
247 today we won't be presented with evidence of law-breaking.
248 Instead, we will hear about internal procedures of the NRC.
249 We will examine the consultation requirements and functions
250 of the chairman of the NRC versus the functions of the other

251 commissioners. The IG will tell us that some commissioners
252 felt misled by Chairman Jaczko, did not like his
253 interpersonal style, and expressed concern about the NRC
254 chairman's unilateral actions.

255 Now, these are legitimate issues for our subcommittee to
256 examine. We should be exercising our oversight to look at
257 the Commission to make ensure that it operates as smoothly,
258 professionally, and fairly as possible. The chairman of the
259 Commission, like the chairman of a congressional
260 subcommittee, our committee has an obligation to conduct
261 proceedings fairly and impartially.

262 Chairman Shimkus is concerned that Chairman Jaczko
263 withheld information from his fellow commissioners. That is
264 a legitimate concern and one we should examine today.
265 Ironically, however, we should look at this in the context of
266 how our committee has operated. Over our objections, the
267 staff of our subcommittee has been conducting interviews of
268 fact witnesses without including Democratic members of our
269 staff. The chairman says that the IG report ``reveals a
270 calculating and political NRC chairman who has abused his
271 authority and withheld information from fellow
272 commissioners.'' Well, that is how some of us feel when we
273 are being treating in this investigation by denying us access
274 to witness interviews. Let us make sure that our committee

275 operates as a model if we are going to criticize the
276 Commission for not operating as we would hope they would.

277 I look forward to hearing from the IG today and want to
278 reiterate that I support a thorough investigation into the
279 Yucca Mountain and the actions of the NRC, but any such
280 investigation should be fair and nonpartisan and I would hope
281 our committee will meet this standard.

282 I yield back my time.

283 [The prepared statement of Mr. Waxman follows:]

284 ***** COMMITTEE INSERT *****

|
285 Mr. {Shimkus.} The gentleman yields back his time. The
286 chair now calls for today's witness, the Honorable Hubert T.
287 Bell, Inspector General of the Nuclear Regulatory Commission.
288 He is accompanied by Mr. Joseph McMillan, Assistant Inspector
289 General for Investigations at the NRC; and Ms. Rossana Raspa,
290 Senior Level Assistant for Investigative Operations in the
291 Office of Inspector General.

292 As you know, the testimony that you are about to give is
293 subject to Title XVIII, Section 1001 of the United States
294 Code. When holding an investigative hearing, this committee
295 has a practice of taking testimony under oath. Do you have
296 any objection to testifying under oath? And both shake their
297 head ``no.''

298 The chair then advises you that under the rules of the
299 House and the rules of the committee, you are entitled to be
300 advised by counsel. Do you desire to be advised by counsel
301 during your testimony today? And the chair recognizes that
302 all shake their head, ``no.''

303 In that case, if you would please rise and raise your
304 right hand and I will swear you in.

305 [Witnesses sworn.]

306 Mr. {Shimkus.} Thank you very much. And now you may
307 give your 5-minute summary of your written statement.

308 Welcome.

|
309 ^TESTIMONY OF HUBERT T. BELL, INSPECTOR GENERAL, NUCLEAR
310 REGULATORY COMMISSION, ACCOMPANIED BY JOSEPH MCMILLAN,
311 ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS; AND ROSSANA
312 RASPA, SENIOR LEVEL ASSISTANT FOR INVESTIGATIVE OPERATIONS

313 } Mr. {Bell.} Good morning again. Mr. Chairman, members
314 of the subcommittee, it is my pleasure to appear before you
315 today. With me are Mr. Joseph McMillan, Assistant Inspector
316 General for Investigations; and Ms. Rossana Raspa, Senior
317 Level Assistant for Investigative Operations.

318 The mission of the Office of Inspector General at the
319 Nuclear Regulatory Commission is to assist NRC by ensuring
320 integrity, efficiency, and accountability in the Agency's
321 programs. My office carries out this mission by
322 independently and objectively conducting and supervising
323 audits and investigations related to NRC's programs and
324 operations; preventing and detecting fraud, waste, and abuse;
325 and promoting economy, efficiency, and effectiveness in NRC
326 programs and operations. Our operating budget is \$10.860
327 million with 58 full-time employees.

328 Last week, my office issued a report conveying the
329 results of an investigation into an allegation that the
330 NRC Chairman unilaterally and improperly closed out NRC's

331 review of the Department of Energy's Yucca Mountain
332 repository application while the government was operating
333 under a continuing resolution during fiscal year 2011 and was
334 purposely preventing the Commission from completing its
335 ruling on the Atomic Safety Licensing Board's decision to
336 deny DOE's motion to withdraw its Yucca Mountain repository
337 license application from NRC.

338 OIG also looked into concerns raised about the
339 chairman's management style and whether his control of
340 information prevents the other commissioners from effectively
341 fulfilling their statutory responsibility to address policy
342 matters.

343 The Nuclear Waste Policy Act of 1982, as amended, names
344 Yucca Mountain as the single-candidate site for geological
345 high-level radioactive waste repository. Next, the Act
346 states that NRC will consider an application for construction
347 of a repository and issue a final decision within 3 years of
348 application's submission.

349 NRC accepted DOE's Yucca Mountain license application in
350 September 2008 and planned, at the end of the technical
351 review, to issue a safety evaluation report (SER) containing
352 its findings on the repository design. In February 2010, the
353 Energy Secretary noted during a Senate hearing that the
354 Administration would seek to suspend licensing for the Yucca

355 Mountain repository because it was not a workable option. In
356 March 2010, DOE submitted to the ASLB a motion to withdraw
357 its Yucca Mountain License Application, which the ASLB
358 denied. The Commission chose to review the ASLB decision and
359 in August 2010 began consideration of this adjudicatory
360 matter.

361 On September 30, Congress issued a continued resolution
362 directing federal agencies generally to spend money at 2010
363 levels to continue 2010 projects and activities. On October
364 4, 2010, NRC senior officials issued a memorandum directing
365 staff to continue its activities on Yucca Mountain license
366 application during the CR period in accordance with the
367 Commission's fiscal year 2011 congressional budget
368 justification. That document directed ``work related to the
369 orderly closure of the Agency's Yucca Mountain licensing
370 support activities." Soon after, the chairman directed staff
371 to stop working on SER and proceed to orderly closure of the
372 program.

373 OIG learned that the CR budget memorandum's language
374 directing staff to follow fiscal year 2011 budget guidance
375 for High-Level Waste Program activities was based on
376 instruction from the chairman's office. OIG found that the
377 chairman used the memorandum to initiate NRC's fiscal year
378 2011 plans to close out its Yucca Mountain license

379 application review, although the budget had not been passed.
380 The chairman's decision was supported by the NRC General
381 Counsel and consistent with the discretion within the
382 chairman's budget execution authority under the
383 Reorganization Plan Number 1 of 1980, OMB budget guidance for
384 CR spending. The administration's decision to terminate the
385 Yucca Mountain repository project and the chairman's
386 interpretation of the Commission's fiscal year 2011 budget
387 policy decisions.

388 OIG also found that while the chairman had the authority
389 to direct staff to follow the fiscal year 2011 budget
390 guidance, he was not forthcoming with the other commissioners
391 about his intent to stop work on the SER as part of
392 implementing close-out activities. Although he told
393 executive director of operations that all commissioners were
394 informed of the support issuance of the CR budget guidance
395 memorandum, a majority disagreed with the outcome of the
396 memorandum, which was the chairman's direction to stop work
397 on the SER. Also, a majority of the commissioners did not
398 think the conditions to proceed to closure had been met.

399 Although one commissioner wrote a commission action
400 memorandum, or COM, to the other commissioners on October 6
401 proposing to direct staff to continue working on SER, two
402 commissioners elected not to vote on the matter. Without a

403 majority, the Commission could not move the matter to policy
404 space within the Commission's purview.

405 OIG found that various factors are preventing NRC from
406 fulfilling its statutory obligation to review DOE's Yucca
407 Mountain repository license application and issue a final
408 decision concerning issuance of a construction authorization.
409 Factors include the administration's decision to terminate
410 the Yucca Mountain repository project, decreasing
411 appropriations to NRC for the High-Level Waste Program, and
412 the chairman's direction to stop work on an SER.

413 OIG found that the Commission's adjudicatory voting
414 procedures are not consistently enforced and they do not
415 provide details on the process that occurred between
416 completion of a notation vote on an adjudicatory matter and
417 the conduct of an affirmation vote. The lack of enforcement
418 of and specificity in the Commission's procedures--coupled
419 with the Commission's practice not to move to affirmation
420 until all commissioners agree to the affirmation notice and
421 order--allows matters to sit in abeyance without final
422 Commission action.

423 OIG also found that the chairman controls the
424 information provided to the other commissioners based on his
425 interpretation of his statutory authority as chairman versus
426 the authority given to the Commission. Because the chairman

427 manages and controls information available to the other
428 commissioners, they are uncertain as to whether they are
429 adequately informed of policy matters that should be brought
430 to their attention. Ultimately, however, all commissioners
431 have the ability to bring any issue they perceive as a policy
432 matter before the Commission by writing a Commission action
433 memorandum gaining a majority of the Commission's support.

434 Mr. Chairman and members of the subcommittee, we would
435 be pleased now to answer questions.

436 [The prepared statement of Mr. Bell follows:]

437 ***** INSERT A *****

|
438 Mr. {Shimkus.} Thank you very much, Mr. Bell. I ask
439 unanimous consent that the contents of the document binder be
440 introduced into the record and to authorize staff to make any
441 appropriate redactions. Without objection, the document will
442 be entered into the record with any redactions that staff
443 determines are appropriate.

444 [The information follows:]

445 ***** INSERT B *****

|
446 Mr. {Shimkus.} I now recognize myself for the first 5
447 minutes.

448 Again, Mr. Bell, thank you. Mr. Bell, how many
449 interviews did you conduct for this investigation?

450 Mr. {Bell.} Thirty-nine total, sir.

451 Mr. {Shimkus.} Thirty-nine total. And they were
452 transcribed interviews under oath, is that correct?

453 Mr. {Bell.} The majority were. I think maybe one or
454 two were not transcribed. They were all under oath.

455 Mr. {Shimkus.} They were all under oath?

456 Mr. {Bell.} Yes. But I think all but two were
457 transcribed.

458 Mr. {Shimkus.} And did you review documents as well?

459 Mr. {Bell.} Yes, we did.

460 Mr. {Shimkus.} So your report is based on documentary
461 evidence and sworn testimony both in its narrative and its
462 findings, is that correct?

463 Mr. {Bell.} That is correct, sir.

464 Mr. {Shimkus.} And this evaluation was conducted
465 independently without any direction or interference from
466 outside of the Office of the Inspector General?

467 Mr. {Bell.} That is correct, sir.

468 Mr. {Shimkus.} Mr. Bell, you investigated the

469 chairman's decision to close down the staff safety evaluation
470 of the Yucca license during a continuing resolution last
471 October, correct?

472 Mr. {Bell.} Yes, sir.

473 Mr. {Shimkus.} And you determined the senior NRC staff
474 expressed concerns that the whole Commission needed to be
475 onboard with guidance to this effect?

476 Mr. {Bell.} Yes, sir.

477 Mr. {Shimkus.} And the chairman told senior staff he
478 would inform the Commission and later said the commissioners
479 were in agreement with the direction and implications of the
480 direction. Is that the case?

481 Mr. {Bell.} That is the case. Yes, sir.

482 Mr. {Shimkus.} But the chairman did not ensure the
483 other commissioners understood the implications of this
484 guidance, did he?

485 Mr. {Bell.} The inference that the chairman had told
486 the Commission was that before he issued any memorandum that
487 all the commissioners would be informed. And this was done
488 to either be himself having conversations with the
489 commissioners or his chief of staff talking to the Commission
490 officers that he had not personally spoken with or discussed
491 it with.

492 Mr. {Shimkus.} But on your report, let me ask this

493 again, Chairman Jaczko did not ensure that each commissioner
494 understood the implications of the guidance?

495 Mr. {Bell.} No.

496 Mr. {Shimkus.} In fact, according to your
497 investigation, the chairman was not forthcoming with the
498 commissioners. He did not even talk to one of them and he
499 did not explicitly explain his plans to direct the shutdown
500 of the Yucca review. Is that what you found?

501 Mr. {Bell.} That is correct, sir.

502 Mr. {Shimkus.} Is the Reorganization Plan of 1980 as
503 amended the statutory guidance under which the NRC operates?

504 Mr. {Bell.} Yes.

505 Mr. {Shimkus.} According to the NRC statutory
506 requirements in this plan, the chairman ``shall be
507 responsible for ensuring that the Commission is fully and
508 currently informed about matters within its functions.''
509 Isn't that correct?

510 Mr. {Bell.} That is what the Reorganization Plan
511 states, yes, sir.

512 Mr. {Shimkus.} That is an essential responsibility of
513 the chairman as laid out in the law, correct?

514 Mr. {Bell.} Correct.

515 Mr. {Shimkus.} According to your investigation, the
516 chairman ``strategically provided three of the four

517 commissioners with varying amounts of information about his
518 intention to not complete the safety evaluation report.''
519 That is what you determined, correct?

520 Mr. {Bell.} That is what the investigation showed, yes,
521 sir.

522 Mr. {Shimkus.} And that is what you determined as the
523 author. Now, is strategically withholding information from
524 different commissioners consistent with ``ensuring that the
525 Commission is fully and currently informed?''

526 Mr. {Bell.} It doesn't appear to be. No, sir.

527 Mr. {Shimkus.} From your investigation, it became clear
528 that many staff, including senior staff and the majority of
529 the commissioners considered the Yucca-related guidance and
530 directives imposed by the chairman to be a policy matter.
531 Isn't that correct?

532 Mr. {Bell.} A policy matter is correct.

533 Mr. {Shimkus.} At page 42 you write that ``the chairman
534 himself knew the Commission did not support the budget
535 guidance for the High-Level Waste Program and that he wanted
536 to be prepared for battle.''. So even the chairman recognized
537 this would be a policy fight, not an administrative matter,
538 correct?

539 Mr. {Bell.} Correct.

540 Mr. {Shimkus.} Would you agree that the decisions

541 surrounding the Yucca Mountain application review have
542 profound national policy implications? Wouldn't you agree
543 that it is a policy matter?

544 Mr. {Bell.} It is a policy matter, sir.

545 Mr. {Shimkus.} What we see here, in fact, was a matter
546 of national policy which the chairman tried to manipulate
547 into a mere administrative matter solely within his control.
548 Is this consistent with the statutory obligations for how to
549 formulate policy?

550 Mr. {Bell.} No, sir.

551 Mr. {Shimkus.} Thank you very much. And I would like
552 to yield 5 minutes to the ranking member, Mr. Green, for 5
553 minutes.

554 Mr. {Green.} Thank you, Mr. Chairman.

555 Your investigation evaluated two allegations that
556 Chairman Jaczko unilaterally and improperly closed out the
557 NRC review of the Yucca Mountain application while the
558 government was operating under a continuing resolution in
559 fiscal year 2011, and two, that the chair was preventing the
560 Commission from ruling on NRC Licensing Board decision to
561 deny the DOE's motion to withdraw Yucca. You found that the
562 chairman had not been forthcoming with all commissioners but
563 ultimately he acted within his authority. Did your office
564 evaluate whether it was appropriate to close the Yucca

565 Mountain facility generally?

566 Mr. {Bell.} No, sir.

567 Mr. {Green.} Okay. Does your report say it was wrong
568 to close the Yucca Mountain facility?

569 Mr. {Bell.} No, it does not. No, sir.

570 Mr. {Green.} And I didn't see it in your report but
571 this is the second time I have noticed an administration
572 taking leave under a continuing resolution. I would say did
573 your investigation discuss anything about an administration
574 using, I guess, very liberally interpreting a continuing
575 resolution that may not have been successful in Congress?

576 Mr. {Bell.} No. No, sir.

577 Mr. {Green.} Some of my colleagues have charged the
578 chair decided to close out the Yucca Mountain licensing
579 review process for some nefarious purpose and some have
580 alleged this was done directly at the behest of the President
581 for political purposes. In your investigation, did you find
582 any indication that the President reached out to the chairman
583 and personally asked him or contacted him to stop reviewing
584 the Yucca Mountain application?

585 Mr. {Bell.} No, sir.

586 Mr. {Green.} This report identified some serious
587 communication issues within the Commission and I think we
588 need to take those seriously. The report does not, however,

589 find illegal conduct, nor does it make any assertions more
590 generally about whether the administration's decision to
591 close Yucca was proper. I do think, Mr. Chairman, our
592 committee needs to look at what the NRC--and frankly, I think
593 it is general government, not just our committee. There has
594 been a case--and I watched what happened with NASA last year.
595 Some decisions were made based on the President's budget that
596 did not pass the House of Representatives or the Senate and
597 yet they made these administrative decisions to change
598 programs. I think that might be the problem we have. And I
599 think whether it be NRC or even other agencies, I think they
600 need to come back to Congress before they make these
601 decisions particularly after \$15 billion in ratepayers' and
602 taxpayers' money has been put into it. And after 25 years of
603 work, all of a sudden a year ago say well, we are not going
604 to accept that. So that is our problem. I think Congress
605 needs to take away that authority that they are using.

606 Mr. {Shimkus.} Will the gentleman yield for one second?

607 Mr. {Green.} I would be glad to.

608 Mr. {Shimkus.} Kind of follow up on that. In this
609 case, if there is a policy decision that should be made, it
610 should be made by the commissioners collectively. Wouldn't
611 you say that is correct, Mr. Bell, a policy decision?

612 Mr. {Bell.} A policy decision should be the Commission.

613 Mr. {Shimkus.} And that is another way, the Commission,
614 so the Commission should all have a say when there is a
615 change in policy. And it is our contention, and I think the
616 report defends it, that the policy decisions were made by the
617 chairman.

618 Mr. {Green.} And I agree. It should be the Commission.
619 But ultimately on something this major, I think we ought to
620 have the opportunity as elected officials to make that
621 decision because, again, Appropriations for \$15 billion for
622 the last 25 years at least. And I yield back my time.

623 Mr. {Shimkus.} The gentleman yields back his time. The
624 chair recognizes the chairman of the full committee, Mr.
625 Upton, for 5 minutes.

626 The {Chairman.} Well, thank you, Mr. Chairman. And I
627 want to thank you, too, Mr. Bell for the report.

628 President Reagan, as we know, signed the Nuclear Waste
629 Policy Act back in 1982, almost 30 years ago. And in reading
630 again the Commercial Nuclear Waste GAO report from this last
631 April, I want to read to you one long paragraph.

632 ``Prolonging onsite storage would add to the taxpayer burden
633 by increasing the substantial liabilities that DOE has
634 already incurred due to onsite storage at commercial nuclear
635 reactors. For DOE to open Yucca in 2020 as it had planned,
636 it began taking custody of spent nuclear fuel, it would still

637 have taken decades to take custody of the entire inventory of
638 spent nuclear fuel. Assuming that 2020 opening of Yucca, the
639 DOE estimated that the total taxpayer liabilities for the
640 backlog as of 2020 would be about \$15.4 billion. It would
641 increase by half a billion for each year of delay thereafter.
642 It is important to recognize that these liabilities are
643 outside of the nearly 15 billion already spent on developing
644 a repository and the estimated 41 to 67 billion still to be
645 spent if Yucca Mountain Repository were to be constructed and
646 become operational, most of the cost of which is borne by the
647 Nuclear Waste Fund.'' So nearly \$100 billion at the end of
648 the day.

649 In reading the report this weekend, I want to read just
650 a couple comments on three commissioners. The first is
651 Commission Magwood, who, on page 17, you write, ``Magwood
652 also told the chairman that he would not support a
653 precipitous termination of the High-Level Waste Program.
654 According to Commissioner Magwood, the chairman assured him
655 that this was not the expectation.'' ``According to
656 Commissioner Magwood, the chairman became very agitated and
657 said that he would never have taken these actions had both
658 Commissioners Apostolakis and Magwood not agreed to support
659 the guidance. Commissioner Magwood said that he objected to
660 this statement quite strongly and that the chairman never

661 told him his plan had been to shut down the High-Level Waste
662 Program and withhold publication of SER Volume III.'

663 Then on Commissioner Ostendorff, you write on page 18,
664 ``Commissioner Ostendorff stated that on October 1, 2010,
665 Chairman Jaczko told him that the CR budget guidance memo
666 would have the staff commence orderly closure of Yucca
667 license application review. Ostendorff told the chairman
668 that he disagreed with his direction. The direction was
669 wrong and you should not issue it.'

670 As it relates to the third commissioner, Commissioner
671 Svinicki, you write on page 19, ``On October 5, her staff
672 informed Chairman Jaczko's office that she objected to the CR
673 guidance. She stated that she did not have any direct
674 communication with Chairman Jaczko's review regarding the
675 matter before the CR budget guidance memo was issued on
676 October 4, 2010.'' So can one come to a different conclusion
677 than there were at least three votes in opposition of where
678 they ultimately were? And it is a pretty damning report as
679 it relates to his control of these three commissioners who in
680 fact said on the record that they didn't agree. Can one come
681 to a different conclusion?

682 Mr. {Bell.} I will let Mr. McMillan answer.

683 Mr. {McMillan.} Clearly, each of those commissioners,
684 sir, thought that the budget guidance memorandum that was

685 being circulated would not stop the SER from progressing.
686 While the Commission might very well be moving towards
687 closure of the program itself, in each of those cases when
688 the individuals were interviewed, it was their impression
689 that the SER would, in fact, be continued.

690 The {Chairman.} But was it not the fact that the staff
691 review of the SER plan was going to be expedited and it was
692 Chairman Jaczko who said slow down?

693 Mr. {McMillan.} That is correct. There was a meeting
694 in the June time frame of 2010 when the staff went to the
695 chairman and indicated a desire to advance SER's related to
696 numbers I and III, the issues related to Volumes I and III.
697 The chairman did indicate to the staff that he wanted to
698 maintain the published schedule that was in the record at
699 that time. That was their understanding that they would
700 maintain the public schedule of timing.

701 The {Chairman.} What did the commissioners feel when
702 they learned that the SER III decision had been withheld from
703 them, their reaction?

704 Mr. {McMillan.} And again, staying within the context
705 of the report, through the interviews, clearly the
706 commissioners that we spoke to that had no understanding of
707 this SER being stopped, okay, were somewhat agitated by that
708 fact and they did in fact raise the issues back with the

709 chairman regarding their discussions that he had had and the
710 indications that at no time did they understand that the SER
711 and the findings in the SER would be stopped.

712 Mr. {Shimkus.} The chairman's time has expired. The
713 chair now recognizes the chairman emeritus, Mr. Waxman, for 5
714 minutes.

715 Mr. {Waxman.} Thank you, Mr. Chairman.

716 Mr. Bell, over the last few months, the chairman of this
717 subcommittee has told us that the NRC chairman acted
718 illegally with regard to its handling of Yucca Mountain. Mr.
719 Bell, you have conducted a 7-month investigation of this
720 matter. Did you find that the chairman of the NRC acted
721 illegally?

722 Mr. {Bell.} No, we didn't, sir.

723 Mr. {Waxman.} Okay. Your report describes concerns
724 raised by some Commission staff that Chairman Jaczko controls
725 and restricts the information provided to his fellow
726 commissioners. Some of this appears to be due to a change in
727 management style. For example, Chairman Jaczko has taken a
728 more hands-on role in the budget process. As your report
729 describes, the chairman meets with division directors to
730 provide direction on the Agency's priorities, and then each
731 division formulates a budget document and submits it to the
732 chairman and the chairman sees the budget as his

733 responsibility and it says that he is entitled to develop the
734 budget as he sees fit. Mr. Bell, although some staff and
735 commissioners may not like this approach, does it mean it was
736 illegal?

737 Mr. {Bell.} It is not illegal and it is the prerogative
738 of the chairman to the direction of the budget. And this
739 chairman has elected to have the budget filter through him
740 and his office and then he disseminates it back to the
741 Commission.

742 Mr. {Waxman.} Now, Chairman Jaczko made a decision that
743 there should be an orderly shutdown of Yucca Mountain because
744 he did not think that the NRC was going to have enough funds
745 to pursue the matter. Wasn't that decision vindicated by the
746 continuing resolution passed overwhelmingly by the House and
747 the Senate and signed by the President where \$10 million was
748 provided to close out Yucca Mountain's consideration?

749 Mr. {Bell.} Well, obviously, yes, sir. And a decrease
750 in the budget for the High-Level Waste Program was one of the
751 contributing factors to moving toward a closeout because it
752 eventually was a zero budget for High-Level Waste.

753 Mr. {Waxman.} So the chairman made a decision about the
754 budget and others might not have agreed with it, but he made
755 that decision and it looked like it was vindicated by the
756 actions of the Congress.

757 Similarly, the chairman has taken a more active role in
758 the planning of the Commission's agenda. At times he has
759 directed staff to not develop an issue paper for the review
760 of the whole Commission. At other times he has determined
761 that an issue paper is an administrative matter, not a policy
762 matter worthy of consideration by the Commission. The IG
763 report states that the chairman wants to control the flow of
764 policy issues to the Commission to allow them to be more
765 efficient. Of course, some disagree and see this as a means
766 to limit the information available to other commissioners.
767 Mr. Bell, although some staff and commissioners may not like
768 this chairman's approach, does that mean it is illegal?

769 Mr. {Bell.} It is not illegal because remember I said
770 that any commissioner has an opportunity to write a COM and
771 get a majority vote on the COM and then it moves from a
772 policy space to Commission space. But you have to have
773 majority Commission agree with the COM. So he has not done
774 anything illegal, but each commissioner knows if they want to
775 move an issue from the chairman's purview to the Commission's
776 purview, then they have to get a majority vote by writing a
777 COM and having the commissioners vote on it. To date that
778 hasn't been done.

779 Mr. {Waxman.} What is a COM?

780 Mr. {Bell.} A communication memorandum of an issue that

781 they want to bring forward.

782 Mr. {Waxman.} I see. So they could have acted to take
783 this issue away from the chairman but they did not.

784 Mr. {Bell.} They can take any issue that they get a
785 consensus on, a majority vote on and move it from the
786 chairman's purview to the Commission agenda.

787 Mr. {Waxman.} Okay. It seems to me that the chairman's
788 interpretation of his role and responsibilities differs from
789 how other commissioners see his role and responsibilities.
790 And this seems to appear to be the root cause of the
791 conflict. Your report, Mr. Bell, also notes that Chairman
792 Jaczko has a ``bad temper'' and created what some employees
793 describe as an ``intimidating work environment.'' And that
794 Chairman Jaczko admits in the report to having a short fuse,
795 especially with his fellow commissioners. Mr. Bell, he
796 obviously should work on his interpersonal skills at the
797 office, but does this mean his behavior is illegal?

798 Mr. {Bell.} No.

799 Mr. {Waxman.} And I could just say from my own
800 experience, I serve on this committee, I know my colleagues
801 in a professional way. I am surprised when I hear that some
802 of them have a huge temper and they are rude to their staffs.
803 I am shocked when I hear that some of the colleagues that I
804 serve with on the committee might Twitter things to people.

805 I just don't have any knowledge of it but I guess the members
806 of this Commission and the staff noticed his poor
807 interpersonal skills. Not admirable, is it? That is, I
808 guess, a rhetorical question, Mr. Bell.

809 Mr. Green said that the report does not find illegal
810 conduct, nor does it make any assertion more generally about
811 whether the administration's decision to close Yucca Mountain
812 Repository was proper. Is that an accurate statement?
813 Should I repeat it?

814 Mr. {Bell.} Yes, repeat it again, sir.

815 Mr. {Waxman.} He said that the report does not find
816 illegal conduct, nor does it make any assertion more
817 generally about whether the administration's decision to
818 close Yucca Mountain was proper.

819 Mr. {Bell.} Yes, that is accurate.

820 Mr. {Waxman.} And then Mr. Green went on to say I do
821 think Congress needs to address the issue. But Congress did
822 address the issue in the continuing resolution.

823 Mr. {Shimkus.} The gentleman's time has expired.

824 Mr. {Waxman.} Is that a correct statement?

825 Mr. {Shimkus.} You can answer him, Mr. Bell.

826 Mr. {Bell.} Yes.

827 Mr. {Waxman.} Thank you, Mr. Chairman.

828 Mr. {Shimkus.} The gentleman's time has expired. The

829 chair now recognizes the chairman emeritus of the full
830 committee, Mr. Barton, for 5 minutes.

831 Mr. {Barton.} Thank you, Mr. Chairman.

832 I don't know where these rumors come from that Members
833 have tempers. That must be on the minority side. We are all
834 peace and light and sunshine on the majority side, you know,
835 so--

836 Mr. {Waxman.} I read a Twitter about it.

837 Mr. {Barton.} You read a Twitter about it? Well, we
838 will investigate those rumors, Chairman Waxman, get to the
839 bottom of it.

840 I want to put into the record, Mr. Chairman, an article
841 from the December 2010 periodical called ``Waste
842 Management.'' It is part of the Nuclear News Magazine and it
843 refers to former Chairman Dale Klein's comments. He wrote an
844 open letter to the Commission and to several journalists
845 about this issue that we are debating today or investigating
846 today. And I will put the entire article in the record but
847 part of his open letter states--this is former NRC chairman
848 Dale Klein--that ``there was no intention by the
849 Commission''--by that he means the NRC--``to approve or even
850 contemplate a preemptive termination of the High-Level Waste
851 Program.'' I would ask that this be put into the record.

852 Mr. {Shimkus.} Is there objection? Hearing none, so

853 ordered.

854 [The information follows:]

855 ***** COMMITTEE INSERT *****

|
856 Mr. {Barton.} Okay. I have read the executive summary,
857 Mr. Bell, of your investigatory report and I listened as you
858 answered some questions from Chairman Waxman. It is my
859 understanding that one of your conclusions is that while
860 Chairman Jaczko didn't act appropriately, it is your opinion
861 that he did not violate any law. Is that correct?

862 Mr. {Bell.} That is correct, sir.

863 Mr. {Barton.} Now, I have a different opinion and I am
864 not an inspector general so my opinion is just that. I think
865 it is an informed opinion. But I have read the statute that
866 applies to the Nuclear Regulatory Commission and it has
867 language that says the chairman ``must fully inform other
868 commissioners of all pending actions.'' You yourself in your
869 report say that Chairman Jaczko I believe said misled but he
870 certainly didn't fully inform all the other commissioners.
871 If that is a true statement, how can he not have violated
872 federal law?

873 Mr. {McMillan.} Sir, what we are attempting to convey
874 in the report was the fact that if the commissioner on the
875 Commission wanted to move his decision from budget space to
876 policy space, there was a mechanism by which to do that. And
877 clearly, Commissioner Ostendorff attempted to do that with
878 his COM in October shortly after the CR memorandum guidance.

879 Mr. {Barton.} How can you put the burden on a
880 commissioner if the chairman has the information and the
881 chairman doesn't fully inform the other commissioners? I
882 mean how can you then put the burden of proof so to speak on
883 an uninformed unaware commissioner?

884 Mr. {McMillan.} It was the responsibility to ensure all
885 the commissioners understood the purpose of the budget
886 guidance memorandum. That clearly was a responsibility of
887 the chairman.

888 Mr. {Barton.} If I understand your report correctly, he
889 failed that responsibility. Is that not correct?

890 Mr. {McMillan.} The report reflects the fact that the
891 commissioners that were involved in that process went to the
892 chairman and indicated that had they known that the SER was
893 going to be stopped that they would not have even given tacit
894 approval towards moving that document--

895 Mr. {Barton.} So that would appear to me to factually
896 prove that he violated the law. I mean I don't know how you
897 can have it any other way. He has got an obligation under
898 law to fully inform the commissioners. Your own report
899 indicates that he didn't fully inform. The commissioners
900 said that had they known, they would have taken preemptive
901 action to prevent what he did. He violated the law. He did
902 not uphold his responsibility under the statute. That is

903 clear layman common sense. My time has expired. I have two
904 more things I want to state.

905 Before you issued this report about him not violating
906 the law, did you check with outside legal counsel on that
907 issue?

908 Mr. {Bell.} No, we didn't, sir.

909 Mr. {Barton.} Did not. So this is an internal
910 decision. What is your opinion, Mr. Inspector General, as of
911 right now the licensing application for Yucca Mountain? Is
912 it active? Has it been terminated? Should it still be acted
913 upon? What is the legal standing given that the Construction
914 Authorization Board refused to allow the Department of Energy
915 to withdraw that application?

916 Mr. {Bell.} Well, the ASLB denied the appeal. So the
917 application is still before the Commission. And until--

918 Mr. {Barton.} So it is active? It should be acted
919 upon. The Commission should make a decision on it. Is that
920 not correct?

921 Mr. {Bell.} Correct.

922 Mr. {Barton.} Thank you, Mr. Chairman.

923 Mr. {Shimkus.} Thank you. The chair now recognizes the
924 gentlelady from Colorado, Ms. DeGette, for 5 minutes.

925 Ms. {DeGette.} Thank you very much, Mr. Chairman.

926 Mr. Bell, in the beginning of your report, you provide

927 some historical background for the structure of the NRC and
928 more specifically for the chairman's authority. I think this
929 is important based on the last questioning. I understand
930 that when the Commission was established, much of the power
931 was evenly distributed among the commissioners, is that
932 correct?

933 Mr. {Bell.} Under the Reorganization Act?

934 Ms. {DeGette.} Under the original structure of the
935 Commission, much of it was evenly distributed, right?

936 Mr. {Bell.} Yes.

937 Ms. {DeGette.} And then it was changed and it was
938 changed because of Three-Mile Island, is that right?

939 Mr. {Bell.} Correct.

940 Ms. {DeGette.} And after Three-Mile Island, both the
941 Presidential Commission and an NRC-commissioned review
942 identified issues with that structure I described with the
943 equal power, and so they completely overhauled the
944 Commission's structure. Is that right?

945 Mr. {Bell.} Correct.

946 Ms. {DeGette.} Now, can you talk to me for a minute
947 about some of the expanded duties and responsibilities of the
948 chairman under that Reorganization Plan in 1980?

949 Mr. {McMillan.} Specifically, ma'am--

950 Ms. {DeGette.} Mr. McMillan?

951 Mr. {McMillan.} --under Section 2 of the Reorganizaiton
952 Plan, it assigns the chairman responsibility for all
953 functions, serving as the Commission's spokesman, serving as
954 the Commission's principle executive officer responsible for
955 developing policy planning and guidance for consideration by
956 the Commission. It also assigns him the responsibility of
957 the administrative functions of the Commission, distribution
958 of business among the offices of the Commission and
959 preparation of the budget estimates, and then proposed the
960 distribution of appropriated funds. The Reorg. Plan states
961 that the chairman determines the use in expenditure funds of
962 the Commission in accordance with the distribution of
963 appropriated funds. So clearly, he has got some unique
964 responsibilities and duties--

965 Ms. {DeGette.} Right.

966 Mr. {McMillan.} --that are different than those of
967 other commissioners.

968 Ms. {DeGette.} He has got additional responsibilities
969 and duties?

970 Mr. {McMillan.} Yes, ma'am.

971 Ms. {DeGette.} Is that right?

972 Mr. {McMillan.} Yes, ma'am.

973 Ms. {DeGette.} And that plan was approved by Congress
974 as I understand it.

975 Mr. {Bell.} 1980.

976 Ms. {DeGette.} And it was approved in 1980? Thank you.

977 Mr. {Bell.} Reorganization.

978 Ms. {DeGette.} And so really to say what may or may not
979 have happened in this situation with Chairman Jaczko is
980 illegal is probably inaccurate, and I think you have answered
981 that about 10 times. Is that correct, Mr. Bell?

982 Mr. {Bell.} Yes.

983 Ms. {DeGette.} So, Mr. Chairman, I would like to make a
984 suggestion. And Mr. Murphy will tell you we had a very, very
985 informative trip last week where we looked at nuclear
986 disposal, studies for permanent and also reprocessing and
987 interim disposal. And I have been interested in this issue
988 for many, many years ever since I went to Yucca Mountain with
989 Chairman Emeritus Barton and I have been thinking,
990 irrespective of what you think about the issue of nuclear
991 energy for this country as a policy, the fact is that we have
992 to grapple with this, and we have to grapple with it in a way
993 that is science-based, not in a way that is based on
994 politics.

995 And the concern I have is that in this country, much of
996 what we have done--and you can argue on either side of the
997 aisle who is more at fault--is we base our issues on how we
998 should dispose of the current and future nuclear waste,

999 politics and not on science where it will work.

1000 And so I guess my suggestion would be, look, we are in a
1001 situation right now where we had looked at Yucca Mountain,
1002 they were undergoing their scientific studies. The last
1003 administration tried to expedite the certifications even
1004 though the studies weren't over, and now this administration
1005 has shut it down. And we can argue back and forth whether
1006 what the chairman did was illegal or just wrong or maybe not
1007 wrong at all or maybe just a miscommunication. We can argue
1008 about all of that, but the truth is we now don't have a
1009 permanent facility that is either certified or under
1010 certification process. And it seems to me that that would be
1011 a very fertile area for us to look at in this committee
1012 because at some point, irrespective of how we decide to take
1013 our nuclear energy policy in the future, we are going to have
1014 to grapple with this.

1015 And so that would be my suggestion. We can waste a lot
1016 of time arguing about these details or we can move forward
1017 and say what are we going to do now coming from where we
1018 come?

1019 Thank you and I yield back.

1020 Mr. {Shimkus.} The gentlelady yields back her time.
1021 And I would just say that the delay of the SER report is a
1022 delay of science-based information for Yucca. That is part

1023 of this whole debate is the SER report, which has been
1024 delayed. And I yield 5 minutes to the vice chairman of the
1025 committee, Mr. Murphy, for 5 minutes.

1026 Mr. {Murphy.} Thank you, Mr. Chairman.

1027 It certainly is important from my friend from Colorado
1028 that it is important to adhere to scientific information
1029 because the implication is not only what happens to Yucca
1030 Mountain, but this impacts the credibility of the NRC on many
1031 issues of licensing.

1032 So Mr. Bell, last week, Chairman Jaczko issued a press
1033 release claiming your office has exonerated him of any
1034 wrongdoing. I am not certain that the report really supports
1035 that interpretation so let me ask this: first of all, on the
1036 matter of the continuing resolution budget guidance issued
1037 unilaterally by the chairman, your report makes it clear that
1038 the senior career NRC managers and other commissioners and
1039 even the chairman himself believed it to be a policy matter.
1040 Is that correct?

1041 Mr. {Bell.} Yes.

1042 Mr. {Murphy.} Now, in fact, on page 22 of your report
1043 you say that the chairman told the executive director of
1044 operations, ``There may be commissioners who don't agree with
1045 this and will try to make it a policy issue.'' Your report
1046 states that the EDO had already advised the chairman that

1047 this was a policy matter--on page 15--and therefore, it
1048 should have been brought before the Commission, is that
1049 correct?

1050 Mr. {Bell.} Yes.

1051 Mr. {Murphy.} I believe the quote on page 15 is that,
1052 ``He believed that if the commissioners decide the matter was
1053 a policy issue, they could vote on it.'' He said, ``he
1054 expressed his concerns''--the chairman--``that the Commission
1055 needed to see the memorandum.'' And your report also details
1056 the efforts of the chairman and his staff made to mislead the
1057 commissioners, deny them the information they needed to make
1058 an informed decision, and prevent other commissioner views on
1059 this matter being considered. Is that correct?

1060 Mr. {Bell.} Yes.

1061 Mr. {Murphy.} Now, is it a crime to mislead?

1062 Mr. {Bell.} It is not a crime but it certainly is not
1063 an up-front way to do business. And also the exoneration--
1064 the chairman's statement was the chairman's statement. We
1065 had no input or anything into the chairman's statements just
1066 for the record.

1067 Mr. {Murphy.} And is it against the law to overturn a
1068 statute that Congress has passed and signed into law?

1069 Mr. {Bell.} No.

1070 Mr. {Murphy.} It is not a crime--not illegal to do

1071 that?

1072 Mr. {Bell.} I mean if Congress overturns it?

1073 Mr. {Murphy.} No. If there was a statement that says
1074 that the chairman and executive director of operations to the
1075 chairman shall be responsible for ensuring that the
1076 Commission is fully and currently informed about matters
1077 within its functions. And that was signed into law and that
1078 is specifically, categorically an order. Is that illegal?

1079 Mr. {Bell.} It is wrong.

1080 Mr. {Murphy.} Okay. Is the chairman of the NRC
1081 statutorily required, then, under the Reorganization Plan of
1082 1980, as amended, to keep its commissioners fully and
1083 currently informed?

1084 Mr. {Bell.} Yes.

1085 Mr. {Murphy.} Okay. So the chairman and executive
1086 director of the NRC are required under law, as you said, to
1087 keep the Commission fully and currently informed of Agency
1088 activities. Do you conclude from your investigation that
1089 this is currently happening that it is fully and currently
1090 informed? Is that your conclusion that it is fully happening
1091 or it is not happening?

1092 Mr. {Bell.} It is not being fully informed, correct.

1093 Mr. {Murphy.} Okay.

1094 Mr. {Bell.} Now, I think the chairman has given them

1095 just enough information to proceed in the manner that he
1096 wanted to proceed with the--

1097 Mr. {Murphy.} But that isn't the matter that the
1098 chairman wanted to--

1099 Mr. {Bell.} But--

1100 Mr. {Murphy.} From what you have said so far on a
1101 couple of occasions now that that runs contrary to what the
1102 statute says was passed by Congress and signed into law by
1103 the President. So how does failure to follow statutory
1104 obligations exonerate the chairman's actions?

1105 Ms. {Raspa.} I am sorry. What was the question?

1106 Mr. {Murphy.} My point is given the statements made by
1107 Mr. Bell here in reference to this statute, my question then
1108 how does failure to follow statutory obligations exonerate
1109 the chairman's actions? You to put the microphone up close,
1110 ma'am.

1111 Ms. {Raspa.} The reorganization plan was premised on
1112 keeping the commissioners informed of matters within their
1113 purview. And so they were aware of the chairman's actions.
1114 They didn't fully understand the implications of that CR
1115 budget memorandum.

1116 Mr. {Murphy.} But I challenge that. As Commissioner
1117 Magwood stated, ``The chairman never told him his plan had
1118 been to shut down the High-Level Waste Program and withhold

1119 publication of SER Volume III. The chairman responded to
1120 him, you should have asked.' ' So is intent to mislead by
1121 withholding information to effect behavior an actual policy
1122 matter, isn't this a violation of the statute?

1123 Mr. {McMillan.} What we attempted, again, sir, to do
1124 was to lay out what transpired during the course of these
1125 sequence of events and leave the interpretations whether it
1126 be regarding legality, okay, to others.

1127 Mr. {Murphy.} I understand.

1128 Mr. {McMillan.} Clearly, when you have--

1129 Mr. {Murphy.} I am not asking whether this is criminal
1130 or not. I think this is a whole other legal issue. The
1131 question is is it a violation of the statute? Is it a
1132 violation of the statute in terms of what they actually did,
1133 what was actually going on?

1134 Mr. {McMillan.} One could draw that conclusion that it
1135 is opposite the intent of that statute, yes.

1136 Mr. {Murphy.} Thank you. I yield back.

1137 Mr. {Shimkus.} The gentleman's time has expired. The
1138 chair now recognizes the gentleman from Kentucky, Mr.
1139 Whitfield, for 5 minutes.

1140 Mr. {Whitfield.} Thank you very much. And, Mr. Bell,
1141 thanks for being with us today. We appreciate it.

1142 I want to touch on, initially, the Department of

1143 Energy's motion to withdraw the application, which was denied
1144 by the Appeal Board. And then after that and the subject of
1145 a lot of this is the fact that there has not been a final
1146 vote by the Commission on whether or not to uphold the Appeal
1147 Board.

1148 And Chairman Ostendorff said--and I want to know if your
1149 investigation affirmed this--but he said that he went to
1150 Chairman Jaczko on September the 9th, September the 14th,
1151 October the 5th, October the 19th, October the 27th wanting
1152 to know when they were going to vote on this. Did your
1153 investigation affirm that?

1154 Mr. {Bell.} Yes.

1155 Mr. {Whitfield.} He did talk to him on those occasions?
1156 Okay. And Chairman Jaczko told him that he was delaying it
1157 because he was concerned that a 2-2 vote would leave the
1158 Appeal Board decision in limbo, is that correct?

1159 Mr. {Bell.} That is correct.

1160 Mr. {Whitfield.} And some of the Commission members
1161 felt like a 2-2 vote would actually uphold the Appeal Board
1162 decision, is that correct?

1163 Mr. {Bell.} In most instances, a 2-2 vote does uphold.

1164 Mr. {Whitfield.} So what did your investigation find
1165 out that Jaczko was thinking about when he said it would
1166 leave the Board in limbo--the decision in limbo?

1167 Ms. {Raspa.} Regarding the adjudicatory matter, we
1168 could only look into the process of their votes. We could
1169 not look at their thinking and what was behind their thinking
1170 in casting those votes.

1171 Mr. {Whitfield.} Okay. But a 2-2 vote upholds the
1172 Board and at least some people are saying that Jaczko is
1173 saying well, I didn't want to vote because I am afraid a 2-2
1174 vote would leave this in confusion. Okay.

1175 In addition to that, I just read through some of this
1176 testimony and your report and it says that Chairman Jaczko
1177 controls and restricts information available to his fellow
1178 commissioners. Did you have people say that?

1179 Mr. {Bell.} Yes, we had.

1180 Mr. {Whitfield.} They view him as unprofessional and
1181 manipulative. Did you find that?

1182 Mr. {Bell.} That was things that have been said also,
1183 yes.

1184 Mr. {Whitfield.} They find that he suppresses papers
1185 and manipulates the agenda planning process because he wants
1186 to control the sequence of papers to be presented to the
1187 Commission.

1188 Ms. {Raspa.} The chairman has also indicated that he is
1189 trying to prioritize those matters that--

1190 Mr. {Whitfield.} I am not asking what he is trying to

1191 do. I am just asking was this told to you. It says here
1192 that you were told that the chairman withholds information to
1193 the Commission by either suppressing papers or manipulating
1194 the agenda.

1195 Mr. {Bell.} Yes, we were told that.

1196 Mr. {Whitfield.} You were told that? Okay. You were
1197 also told that the distinction between policy issues and
1198 administrative actions is a subject of contention within the
1199 Commission, is that correct?

1200 Mr. {McMillan.} Yes.

1201 Mr. {Bell.} That is correct. Yes, sir.

1202 Mr. {Whitfield.} And, of course, the chairman would
1203 like if he wants it to be administrative, then it is not a
1204 policy matter so he would have more control over that, is
1205 that correct?

1206 Mr. {Bell.} That is correct. Anything that is not
1207 policy he would have.

1208 Mr. {Whitfield.} Okay. And it says that some people
1209 have said that he acts in an unprofessional way, that he uses
1210 intimidation, that there is a work environment of
1211 intimidation, he yells at people, his tactics have a negative
1212 impact on the camaraderie in the office or in the Agency. He
1213 rules by intimidation. His behavior creates an environment
1214 in which it is difficult for people to work with him. He

1215 even said that himself. And the thing that disturbs me about
1216 this here you have a chairman of a Nuclear Regulatory
1217 Commission that has such a dramatic impact on this country
1218 that is now resulting in legal judgments against the Federal
1219 Government paid for by taxpayers, and the clear impression is
1220 that we have one chairman over there who is unprofessional,
1221 who intimidates, who manipulates, and this has all been
1222 testified to by people that you have interviewed. Is that
1223 correct?

1224 Mr. {Bell.} That is correct.

1225 Mr. {Whitfield.} And would you say that the tenure of
1226 that would be a violation of the Energy Reorganization Act of
1227 1974 if you are trying to have a collegial atmosphere and
1228 provide transparency and information, what has been testified
1229 to by these people, his actions would be violating that Act,
1230 wouldn't it?

1231 Mr. {Bell.} I don't think it violates the Act. I mean
1232 the judgment and the personality and everything that goes
1233 with his demeanor at times people consider it unprofessional.

1234 Mr. {Whitfield.} All right. I see my time has expired.

1235 Mr. {Shimkus.} The gentleman's time has expired. The
1236 chair recognizes the gentleman from Pennsylvania, Mr. Pitts,
1237 for 5 minutes.

1238 Mr. {Pitts.} Thank you, Mr. Chairman.

1239 Mr. Bell, in your report you asked the chairman to
1240 respond to your office on what, if any, action he intends to
1241 take in response to your investigation. To your knowledge,
1242 does the press release last week by Chairman Jaczko that he
1243 was exonerated represent the views of the Commission?

1244 Mr. {Bell.} No, that is the chairman's press statement.
1245 That is his press release to the report.

1246 Mr. {Pitts.} Do you consider his press release an
1247 adequate response to your report?

1248 Mr. {Bell.} That is not a response to me at all. That
1249 is just a press release that he issues publicly. So we have
1250 not had any correspondence with the chairman about the report
1251 yet.

1252 Mr. {Pitts.} What do you intend to do if the chairman
1253 fails to respond formally to your report?

1254 Mr. {Bell.} I mean the report stands on its own and the
1255 report will stay open until we get some response. If we
1256 don't get a response, then the actual report itself will be
1257 closed until we get some notice from the chairman. Then it
1258 would be an open report.

1259 Mr. {Pitts.} All right. Regarding the issuance of the
1260 CR guidance, the executive director for operations on page 15
1261 said, ``expressed his concerns to the chairman that the
1262 Commission needed to see the memorandum.'' And the chairman

1263 told him ``the memorandum would not be issued until the other
1264 commissioners were on board with the memorandum language.``
1265 The EDO went on to testify that ``the Chairman told him that
1266 all four commissioners were in agreement with the language.``
1267 Is that correct?

1268 Mr. {Bell.} That is what we were told, yes.

1269 Mr. {Pitts.} Now, you conclude that the chairman
1270 selectively mislead three commissioners and to one
1271 commissioner he revealed nothing at all about the CR guidance
1272 to close out the Yucca review, is that correct?

1273 Mr. {Bell.} That is correct.

1274 Mr. {Pitts.} So someone's testimony appears to be false
1275 here. Either the EDO is misstating that he received this
1276 assurance from the chairman or the chairman did not tell the
1277 truth to the EDO about having the agreement of the other
1278 commissioners. How do you reconcile this testimony?

1279 Ms. {Raspa.} The chairman did not recall when asked if
1280 he had communicated to the EDO and exactly what he had
1281 communicated in terms of giving him the green light to issue
1282 this CR memorandum. However, the EDO, as you have indicated,
1283 does say or did tell us that the chairman told him the
1284 memorandum could be issued, all were on board, he had spoken
1285 to all the commissioners. And therefore, based on that, he
1286 signed the CR memorandum.

1287 Mr. {Pitts.} Well, I think a question raised by this
1288 report here is that somebody is not telling the truth in this
1289 process. Your report lays out what people say, but you do
1290 not connect the dots. What are the next steps?

1291 Ms. {Raspa.} We cannot say that the chairman lied to
1292 us. He said he did not recall what he told the EDO quite
1293 frankly. That is in our report. There is a conflict and
1294 sometimes you can't resolve that conflict.

1295 Mr. {Pitts.} Is this investigation continuing? Are
1296 there other facts and issues that you believe warrant
1297 investigation?

1298 Mr. {McMillan.} At this juncture this is still an open
1299 investigation. If something were to be presented to us that
1300 necessitated us looking at a particular issue related to the
1301 allegations themselves, then clearly we would take it under
1302 that context, you know, to assess. But as Ms. Raspa said,
1303 occasionally in an investigation, as you are cognizant of,
1304 you can't always reconcile the testimonies between people.
1305 There was no anecdotal documentary evidence to line up
1306 specifically what the chairman recalled or did not recall in
1307 relationship to the EDO's testimony that it was, in fact,
1308 told to him. So this was a point that we just could not
1309 resolve regarding that communication.

1310 Mr. {Pitts.} So it appears that Chairman Jaczko has let

1311 politics trump science here, that he has manipulated the
1312 process. He has misled some of the fellow commissioners
1313 about the consequences of the actions they were taking. And
1314 I think the credibility of the NRC has been damaged. Its
1315 reputation has been damaged. There are some real serious
1316 questions about the Agency's independence and scientific
1317 integrity, and I thank you for your testimony.

1318 Mr. {Shimkus.} The gentleman's time has expired. The
1319 chair recognizes the gentleman, Mr. Bass, for 5 minutes.

1320 Mr. {Bass.} Thank you, Mr. Chairman. I just want to
1321 follow up very quickly on a line of questioning that Mr.
1322 Pitts brought up at the beginning of his time.

1323 It is my understanding that the chairman of the NRC sent
1324 out a press release after this report was published
1325 exonerating himself. Is that the only response that he is
1326 required to make to your report?

1327 Mr. {Bell.} The press release is not a response to my
1328 report. His response to my report has to be directed to me.

1329 Mr. {Bass.} And he hasn't done that, right?

1330 Mr. {Bell.} No, he hasn't done that. I mean we
1331 normally--

1332 Mr. {Bass.} He has no obligation to either, right?

1333 Mr. {Bell.} Well, no, we give him an opportunity to
1334 respond, and normally we give 120 days.

1335 Mr. {Bass.} So if nothing happens in 120 days, it is
1336 the end as far as you are concerned?

1337 Mr. {Bell.} Well, it is the end of what we looked at.

1338 Mr. {Bass.} Yeah. All right. Fair enough. I have a
1339 couple of questions regarding control of Commission
1340 information.

1341 Mr. Bell, is it your experience that under former
1342 chairmen's staff could bring policy matters directly to the
1343 full Commission?

1344 Mr. {Bell.} Under previous chairmen?

1345 Mr. {Bass.} Yeah. Is it your experience that under
1346 previous chairmen it was the standard that staff could bring
1347 policy matters directly to the full Commission?

1348 Mr. {Bell.} I don't know firsthand but it has never
1349 come to us in a manner that was disputed like this.

1350 Mr. {Bass.} All right. Fair enough. Yet your report
1351 under Chairman Jaczko the staff was not able to bring policy
1352 matters directly to Commission, were they?

1353 Mr. {McMillan.} I can help clarify that to some degree.

1354 Mr. {Bass.} Yes, certainly.

1355 Mr. {McMillan.} The staff has periodic meetings, okay,
1356 with all of the commissioners, including the chairman. And
1357 during the course of those meetings, a variety of issues are
1358 serviced which is coming from the staff in and of itself. It

1359 is just the manner by which the current chairman handles the
1360 agenda if you would is where there has been some disconnects
1361 from previous chairmen in the Commission itself.

1362 Mr. {Bass.} Well, do you think it is fair to say that
1363 the staff were constrained from communicating policy matters
1364 to the full commission or on matters that the chairman may
1365 have had a disagreement with staff?

1366 Ms. {Raspa.} I think that as Mr. McMillan indicated,
1367 the staff does communicate with each of the commissioners.
1368 They generally know what the staff may be working on. What
1369 becomes more difficult is when the staff is looking for
1370 guidance and wants to, for example, get a paper up to the
1371 commissioners that that process has to go through the EDO who
1372 in turn has to go through the chairman. And it is at that
1373 point where even though the commissioners know, they may not
1374 know always real time as items are coming up they have to be
1375 prioritized.

1376 Mr. {Bass.} Let me reconstruct the sentence. Do you
1377 think that the staff was constrained from communicating
1378 policy matters to commissioners at any time?

1379 Mr. {Bell.} I would say yes.

1380 Mr. {Bass.} Okay. Fair enough. According to your
1381 report on page 29, the executive director of operations, EDO,
1382 said the chairman did not want any differences between his

1383 budget and staff's budget and sought as his budget proposal.
1384 The chairman also wanted the opportunity to review and change
1385 any of the staff's responses to the commissioners' questions.
1386 Do you believe unilaterally editing staff information
1387 supplied to the Commission is an appropriate way to manage
1388 Agency information sharing?

1389 Mr. {Bell.} Well, again, this chairman has operated
1390 differently than previous chairmen. And previous chairmen it
1391 was a more open and collaborative discussion of the budget.
1392 This chairman has sought to take the budget as his
1393 responsibility and has taken full responsibility for it. I
1394 mean if commissioner officers seek any information from any
1395 office, then all this information has to be filtered back
1396 through the chairman's office for a response.

1397 Mr. {Bass.} So in your opinion, unilaterally editing
1398 staff information supplied to the Commission is an
1399 appropriate way, then, to manage Agency information?

1400 Mr. {Bell.} No.

1401 Mr. {Bass.} Okay. Fair enough. Your report on page 37
1402 that the chairman's budget estimate was submitted to the
1403 Commission without fundamental supporting documents presented
1404 by the staff, is that correct?

1405 Mr. {Bell.} Correct. But I think that has
1406 subsequently, though the general counsel, has advised the

1407 chairman's office that when he submits budget information to
1408 any of the offices that there has to be supporting
1409 documentation to support the budget or the appearance is
1410 everything is coming from the chairman himself. So I think
1411 the chairman has recognized that in the future any budget
1412 items that go forward has to have some supporting
1413 documentation from the office that provided the budget
1414 information.

1415 Mr. {Bass.} Mr. Chairman, I am out of time. I yield
1416 back.

1417 Mr. {Shimkus.} The gentleman yields back his time. The
1418 chair recognizes the gentleman from Ohio, Mr. Latta, for 5
1419 minutes.

1420 Mr. {Latta.} Well, thank you very much, Mr. Chairman.
1421 And thanks very much for being here today. Sitting through
1422 these hearings I have come to the conclusion if I was
1423 teaching federal administrative law in law school, I would
1424 have the perfect case study to do. And also having been a
1425 county commissioner back in the State of Ohio where we
1426 actually had rules and regulations that we had to follow,
1427 this is amazing. And I know that Chairman Barton expressed
1428 that in the last hearing, and I am just astounded what I have
1429 been hearing today and also when I read the report because,
1430 you know, I make lots of tabs and everything else.

1431 But if I could, you know, the questions, you know, you
1432 said it is the prerogative of the chair who gets the
1433 information, but, you know, first of all, doesn't this Board
1434 sit as a quasi-judicial board, Mr. Bell? Would it sit as a
1435 quasi-judicial board?

1436 Mr. {Bell.} Quasi-judicial board?

1437 Mr. {Latta.} Right, when it is making its rulings. And
1438 it has to hear from all the parties and it has to have the
1439 information come before the Board?

1440 Mr. {Bell.} I think the Commission as a whole has to
1441 make a decision--

1442 Mr. {Latta.} Right, but the Board makes the decision
1443 but is it quasi-judicial as it is doing this?

1444 Mr. {Bell.} Yes.

1445 Mr. {Latta.} Okay. And would you also say that the
1446 Commission needs to make timely actions on their actions when
1447 they have something come before it? Because if you don't,
1448 justice delayed is justice denied in these cases. Would that
1449 be a fair statement?

1450 Mr. {Bell.} Well, to think that within a certain time
1451 frame after anything has happened that you would have motions
1452 going forward to end whatever they are in the process of
1453 doing.

1454 Mr. {Latta.} Yes, and also following along, then, when

1455 the Commission's own internal procedures say the
1456 commissioners should vote within 10 business days and parties
1457 are waiting for the outcome, isn't holding a vote unfair in
1458 that situation?

1459 Mr. {Bell.} Well, it seems unfair but there is no--I
1460 mean the voting processes are relaxed. It is not enforced
1461 the way it should be.

1462 Mr. {Latta.} And I did find your report very, very
1463 interesting because on page 36 when you were talking about
1464 the chairman told the OIG he did not recall the email from
1465 his chief of staff advising him not to request an extension
1466 to vote and that he did not realize an extension was required
1467 on adjudicatory matters if a vote was not cast within 10
1468 days. He said that the Commission does not always act in
1469 accordance with procedures. For example, the procedures say
1470 that the Commission votes on matters within 10 days, but then
1471 he goes on. He said that the Commission procedures are a
1472 guideline and not absolute rules, which take us back to what
1473 was being said here earlier, going back to the Reorganization
1474 Plan within Section 1, Section 2, you know, it really lays
1475 out what the Commission is supposed to be doing. Did the
1476 Commission act the way it should have been acting under its
1477 own rules and regulations.

1478 Mr. {Bell.} No. No.

1479 Mr. {Latta.} Okay. Going on. On page 29, again, this
1480 report is just fascinating. Page 29 when you were
1481 interviewing Commissioner Ostendorff talking about what was
1482 going on July the 11th, 2010, it says the general counsel,
1483 again, the general counsel--the attorney--told Commissioner
1484 Ostendorff that it was his experience that there were certain
1485 issues that the chairman does not want to hear from him on.
1486 He goes on to say ``the conversation left him with the
1487 impression that there was possibly not an open environment
1488 for OGC to provide unfiltered advice to the chairman without
1489 fear of retribution.'' Is that the way that we have due
1490 process being carried out in one of our administrative boards
1491 or commissions here? You know, going back to the whole idea
1492 of due process and getting something done, did that occur
1493 under the policy of the Commission?

1494 Mr. {Bell.} That is what we were told. I mean this is
1495 what Commissioner Ostendorff said that the general counsel
1496 told him. Again, I mean, you know--

1497 Mr. {Latta.} Okay. And again, in your opening
1498 statement, again, you know, intriguing. Page 7, again, in
1499 your opening statement, you know, it is very interesting.
1500 The first full paragraph when you said in the second line
1501 ``OIG also found that although the chairman had authority to
1502 direct staff to follow the FY 2011 budget guidance, he was

1503 not forthcoming with other commissioners about his intent to
1504 stop work on the SER as part of the implementing of his
1505 closeout activities.'' So again, is that proper procedure
1506 under the law and under what they have as their rules and
1507 regulations at the NRC?

1508 Mr. {Bell.} No.

1509 Mr. {Latta.} Okay. And just real briefly, you know,
1510 when you are saying ``not forthcoming,'' and I think the term
1511 by one of my fellow colleagues appears something about begin
1512 misled, you know, are we talking about a word that we should
1513 be using is a lie, to mislead? Is it a lie to not be
1514 forthcoming or are we just talking about what some people
1515 like to talk about back home--they call it a lie back home
1516 but here we are talking about a white lie?

1517 Mr. {McMillan.} That is for a characterization, is a
1518 white lie or an outright--it was clear that the commissioners
1519 that spoke with the agents conveyed the fact that they did
1520 not have all the information to believe that that SER was
1521 going to be stopped as a part of that budget guidance
1522 memorandum. That is factually what we were told by each of
1523 those commissioners that we interviewed. Now, the
1524 characterization as to his intentions behind it, his mens rea
1525 thoughts about it, we didn't get into that quite frankly with
1526 regard to--what we were trying to do was line up what

1527 occurred when and how did this document get out without their
1528 concurrence if you would. And that is what they told us is
1529 that they had no knowledge that the SER was going to be
1530 stopped.

1531 Mr. {Latta.} Thank you. Mr. Chairman, I see my time is
1532 expired and I yield back.

1533 Mr. {Shimkus.} The gentleman yields back his time. The
1534 chair is going to ask unanimous consent that Mr. Markey be
1535 recognized for 5 minutes. Without objection, so ordered.

1536 Mr. {Markey.} Thank you, Mr. Chairman, very much.

1537 I find it highly ironic that we are having a hearing to
1538 express the majority's apparent surprise that matters related
1539 to Yucca Mountain are sometimes political. This issue has
1540 been nothing but political from the very beginning. The
1541 Department of Energy was supposed to select two
1542 scientifically-appropriate sites, one east of Mississippi and
1543 one west of Mississippi River. But the Speaker of the House
1544 then said he didn't want it in Texas. That was one of the
1545 sites. The second site was in Washington State. The
1546 majority leader came from Washington State. He said I don't
1547 want it in Washington State. It was out. The third state
1548 was the salt domes in Louisiana. The chairman of the
1549 Committee on Energy from the Senate said I don't want it in
1550 Louisiana. The fourth site was in North Carolina. The

1551 ranking Republican on this committee said I don't want it in
1552 North Carolina. Mississippi itself was a potential site, but
1553 they had a very powerful delegation at that time and they
1554 said we don't want it in Mississippi.

1555 And John Sununu as the Governor of New Hampshire on
1556 behalf of George Bush running for president in '88 said we
1557 don't want it in the granite formations of New Hampshire.
1558 And so the nuclear queen of spades wound up--not on a
1559 scientific basis but a political basis--political, political,
1560 political--in Nevada. That is how it all happened. I was
1561 here. I was saying you make a political decision you are
1562 going to wind up with big scientific problems at the end of
1563 the day, big scientific problems. So Congress actual--this
1564 committee barred the Department of Energy from looking at any
1565 other site other than Yucca Mountain. We used political
1566 science, not real science to hand that nuclear queen of
1567 spades to Nevada. That is the legacy this committee left.

1568 The problem is that Yucca Mountain has two fault lines
1569 running through it and is in an active earthquake zone.
1570 There have been more than 600 earthquakes within 50 miles of
1571 the site within the past 20 years. We saw just how
1572 earthquakes can impact spent nuclear fuel in Japan just a few
1573 months ago. Moreover, in 1997 scientists found that
1574 plutonium from nuclear weapons tests that had been conducted

1575 just a few decades earlier had migrated a mile through water
1576 in the rock near Yucca Mountain, which contradicted earlier
1577 assertions that the repository site was geologically isolated
1578 from the water table.

1579 So basically what we had was Congress writing a law that
1580 Yucca Mountain was a nuclear Alcatraz from which there could
1581 be no migration of this nuclear material. But scientists
1582 said it was more like a nuclear sieve. And we heard that
1583 from the National Academy of Sciences back then in 1987 and
1584 '86. We heard that from them here, but this committee and
1585 other committees ignored that warning.

1586 The Obama Administration bravely recognized that moving
1587 forward with Yucca Mountain was not the scientifically
1588 appropriate direction to take. DOE withdrew its license
1589 application and Congress started to slash funding for the
1590 project. Chairman Greg Jaczko then did what any permitting
1591 office would do when a building plan is cancelled. He
1592 stopped spending money processing the permit. Although
1593 members of this committee have accused him of doing something
1594 illegal, the NRC Inspector General and general counsel have
1595 both found that it was legal and entirely within his
1596 authority to do so.

1597 Mr. Bell, you said earlier that Chairman Jaczko's press
1598 release on your report was his alone and you had no input,

1599 but isn't it true that you and your deputy saw this statement
1600 before it went out from Chairman Jaczko and you told the
1601 chairman's chief of staff that you had no objections. Is
1602 that true?

1603 Mr. {Bell.} No, that is not true. I read the statement
1604 but I said that was his statement. We made no changes,
1605 nothing to the statement. I just saw the statement because
1606 he said he was going to put it out.

1607 Mr. {Markey.} Did you say you had an objection to him
1608 putting it out?

1609 Mr. {Bell.} I said I didn't oppose him to releasing the
1610 statement.

1611 Mr. {Markey.} You did not oppose him in putting out
1612 that statement?

1613 Mr. {Bell.} No. I mean--

1614 Mr. {Markey.} Okay. Great. So in finding, number one,
1615 you said two of the commissioners didn't understand that when
1616 the chairman told him that he would be using the
1617 appropriations process to proceed with closure of the Yucca
1618 Mountain program, this meant the documents necessary for the
1619 Yucca Mountain license would cease being prepared. On page
1620 23, your report notes that when Chairman Jaczko suspected
1621 that one of the commissioners didn't understand the
1622 discussion they had, he directed his staff to follow up with

1623 the commissioner's staff to be sure it was clear. Do you
1624 believe that Chairman Jaczko is responsible for a failure by
1625 other commissioners to understand their support for a
1626 document that said it would begin the closure of Yucca
1627 Mountain's technical review and adjudicatory activities when
1628 the license application was withdrawn even after he tried to
1629 explain it to him?

1630 Mr. {McMillan.} Clearly, he said Chairman Jaczko is
1631 irresponsible.

1632 Mr. {Markey.} Is it his fault they didn't understand
1633 it.

1634 Mr. {McMillan.} He had a responsibility to ensure that
1635 they understood the content of the four squares of that piece
1636 of paper. And if they are saying--and what they related to
1637 us during the interviews was they never came to understand
1638 that the SER--and I think sometimes those are differences--

1639 Mr. {Markey.} Can I tell you the truth? I have a hard
1640 time when two commissioners on the Nuclear Regulatory
1641 Commission can't understand something this prosaic, this
1642 simple when they have to understand the most complex nature
1643 of nuclear materials. So to say that they didn't understand
1644 something so fundamental, okay, as to the way in which the
1645 regulatory process works, in my opinion they did not do their
1646 job. They had a responsibility after they were told that

1647 that was the route that they were going to go.

1648 Mr. {Shimkus.} The gentleman's time is expired.

1649 Mr. {Markey.} I thank the chairman.

1650 Mr. {Shimkus.} The chair now recognizes Mr. Harper for
1651 5 minutes.

1652 Mr. {Harper.} Thank you, Mr. Chairman.

1653 Mr. Bell, when the staff reported in March of 2010 to
1654 the Commission about their plans for completing the Yucca
1655 Safety Evaluations and tight budget constraints, their plans
1656 were to complete Volume I and Volume III of the SER not later
1657 than, I believe, August and November of 2010 respectively.
1658 Is that correct?

1659 Mr. {Bell.} That is correct, sir.

1660 Mr. {Harper.} Now, according to your report, the EDO
1661 and technical staff believed that even if DOE were to
1662 withdraw the application, it would benefit the country to
1663 have completed the technical review. Is that correct?

1664 Mr. {Bell.} That is correct, sir.

1665 Mr. {Harper.} The most critical portion of the
1666 technical review, the SER Volume III was almost complete and
1667 on track to be completed well before November according to
1668 staff. Is that correct?

1669 Mr. {Bell.} Yes.

1670 Mr. {Harper.} Completion by the end of August is

1671 consistent with a not-later-than-November schedule reported
1672 to the Commission in March, isn't it?

1673 Mr. {McMillan.} Sir, just on that last question--

1674 Mr. {Harper.} Yes?

1675 Mr. {McMillan.} --with regards to the completion, that
1676 was not necessary concurrence and approval. Okay. While it
1677 might very well have been completed by the staff to be
1678 forwarded up, it still had to go through a concurrence
1679 process including OGC, so I just want to make sure we
1680 clarified that point.

1681 Mr. {Harper.} Certainly. Thank you.

1682 Mr. {McMillan.} Thank you.

1683 Mr. {Harper.} But when the chairman learned that the
1684 report could be ready in August before the fiscal year, is it
1685 true that he inserted himself into the process in June and
1686 directed staff to slow down?

1687 Mr. {McMillan.} He directed the staff to maintain the
1688 current published schedule with regards to the release of the
1689 various products.

1690 Mr. {Harper.} Okay. But did he not in fact--did you
1691 have an addition to that?

1692 Ms. {Raspa.} I would just note that the August time
1693 frame was for Volume I. It was not for Volume III. Volume
1694 III was anticipated in November. However, the majority of

1695 the work had been done and they believed they could get both
1696 volumes ahead of schedule.

1697 Mr. {Harper.} Okay. But in fact--

1698 Mr. {Shimkus.} Would the gentleman yield just for a
1699 second?

1700 Mr. {Harper.} Yes.

1701 Mr. {Shimkus.} Which is amazing that a government
1702 agency would be good enough to move quickly instead of being
1703 way behind. So in that aspect I would applaud the NRC for
1704 being prompt.

1705 Mr. {Harper.} And I will go back, Mr. Bell, and ask
1706 this. In fact, though, the chairman did direct staff to
1707 issue the SER Volume III not earlier than November. Isn't
1708 that correct?

1709 Ms. {Raspa.} His June 11 memorandum speaks to not
1710 issuing Volume I prior to schedule. It does also speak about
1711 other volumes but only Volume I is specifically identified as
1712 not being released prior to August.

1713 Mr. {Harper.} Okay. But prior to November was Volume
1714 III.

1715 Ms. {Raspa.} Volume III was due in November, correct.

1716 Mr. {Harper.} Now, was the impact of his actions in the
1717 SER Volume III would not be completed by what date? Did you
1718 say October 1?

1719 Ms. {Raspa.} November.

1720 Mr. {McMillan.} November.

1721 Mr. {Harper.} November, okay. Now, as your report on
1722 page 27, when senior staff discussed the chairman's actions
1723 to slow the completion of the SER, they indicated to the
1724 chairman that it would be contrary to the Agency's value of
1725 openness and transparency to slow down that work. Is that
1726 correct?

1727 Ms. {Raspa.} Our report reflects that one manager told
1728 us that, correct.

1729 Mr. {Harper.} So at least one commissioner also warned
1730 the chairman that it was not a good idea to slow the process,
1731 is that correct?

1732 Mr. {McMillan.} Yes.

1733 Ms. {Raspa.} One commissioner, yes, also agreed that it
1734 shouldn't be slowed.

1735 Mr. {Harper.} Did the chairman listen to the senior
1736 staff or other commissioners and allow the staff review to
1737 continue at the same pace the staff themselves had set?

1738 Ms. {Raspa.} No.

1739 Mr. {Harper.} The staff also informed the Commission in
1740 March 30, 2010, that it planned to continue to work on any
1741 remaining SER volumes until fiscal year 2010 funds were
1742 exhausted, is that correct?

1743 Mr. {McMillan.} Correct.

1744 Mr. {Bell.} Yes.

1745 Mr. {Harper.} Were those funds exhausted by November of
1746 2010?

1747 Ms. {Raspa.} No, they were not. By the end of the
1748 fiscal year 2010 there was approximately \$7 million
1749 remaining.

1750 Mr. {Harper.} Okay. And, in fact, according to your
1751 report, the NRC staff including the EDO assumed as late as
1752 mid-September that the CR guidance would allow for continuing
1753 the license review with those available funds as you said.
1754 So the draft EDO CFO memos of mid-September bear this out.
1755 So despite the chairman's instructions to slow down, staff
1756 planned to continue work using those fiscal year 2010 funds.
1757 But the chairman changed that. That is where we are, right?

1758 Ms. {Raspa.} The senior staff always anticipated that
1759 they would be able to complete certain volumes and they were
1760 relying on fiscal year 2010 funds to do that.

1761 Mr. {Harper.} So this was the chairman's strategy to
1762 slow-walk these critical reports to October, early November,
1763 and then use his budget authority to ensure the staff's
1764 findings would not be made public. Is that correct?

1765 Mr. {McMillan.} I think the report is reflective of the
1766 fact that once they got into budget space, you would have to

1767 use another mechanism by which to change the course. And
1768 since you did have the budget guidance memorandum that
1769 everyone was complying with, it would have taken a COM at
1770 that juncture then to move it over into policy space.

1771 Mr. {Harper.} My time is almost up. Let me ask this
1772 question. Did your investigation examine whether the
1773 chairman's actions were directed by or coordinated with the
1774 White House or Senator Harry Reid?

1775 Mr. {McMillan.} We had no indications or inferences by
1776 anyone that came to us that assured us or stated to us that
1777 that occurred.

1778 Mr. {Harper.} My question was did you examine that
1779 possibility? Did you look into that with any of the
1780 witnesses?

1781 Mr. {McMillan.} There was nothing that would lead us to
1782 that from the information of the interviews that we conducted
1783 where anyone stated that at all so we didn't go and probe any
1784 further in that regard. We stayed within regards to the
1785 allegation that was proffered to us. And no one said that
1786 there was any interference by the White House at all.

1787 Mr. {Harper.} Right. But did you ask?

1788 Mr. {McMillan.} I want to get back with you on that one
1789 particular point just to ensure in our notes, but I just want
1790 to assure you that it never came up.

1791 Mr. {Harper.} Okay. But my question is did you ask it
1792 through any communications along the lines of what I just
1793 inquired?

1794 Mr. {McMillan.} I would have to get back with you with
1795 regard to that specific question.

1796 Mr. {Harper.} Thank you. With that, I yield back.

1797 Mr. {Shimkus.} The gentleman's time has expired. The
1798 chair now recognizes the gentleman from Louisiana, Mr.
1799 Cassidy, for 5 minutes.

1800 Dr. {Cassidy.} Thank you. Now, I appreciate Mr.
1801 Markey's efforts to defend his former employee, but he
1802 alleged that maybe those other commissioners were derelict in
1803 their responsibility of learning as much as they could learn.
1804 Did you find any evidence of dereliction of duty in learning
1805 other issues by the other commissioners?

1806 Mr. {McMillan.} Again, I think it was clear that when
1807 the commissioners were interviewed by our office, they were
1808 very concerned by the fact that they felt they did not have
1809 all the information.

1810 Dr. {Cassidy.} Okay. Now earlier I think you, Mr.
1811 Bell, mentioned that the senior staff felt constrained in
1812 conveying information to the other commissioners. But just
1813 to be clear, would they have been constrained without
1814 instructions from the chairman as to what to communicate?

1815 Would they on their own have said oh, we shall be constrained
1816 because whatever or would it have been a directive from their
1817 chairman to not communicate certain issues?

1818 Mr. {Bell.} Well, I think it was pretty common
1819 knowledge that any communications that went back to the
1820 chairman had to go through the chairman's office.

1821 Dr. {Cassidy.} So the constraint would have come from
1822 the chairman.

1823 Mr. {Bell.} It was just the way this chairman has
1824 elected to do business, that if it is not a policy issue and
1825 his office can control whatever it was, whatever request
1826 commissioners made, whether it be the budget or otherwise.
1827 Before the commissioners got an answer, it had to be vetted
1828 through the chairman's office.

1829 Dr. {Cassidy.} So ultimately, just in a word, it was
1830 the chairman's responsibility. It was the chairman who was
1831 doing the restraining?

1832 Mr. {Bell.} Correct.

1833 Dr. {Cassidy.} Correct. Now, you know, I have been
1834 here for 3 years and I look at taxpayers who just see \$15
1835 billion frittered away and I have to ask, although you are
1836 clear that he may have been within the letter of the law--
1837 there is a question of fact and we can't resolve this
1838 question of fact--do you think he was within the spirit of

1839 the law in terms of the Reorganization Act and was he within
1840 the spirit of the law communicating to his fellow
1841 commissioners that which they needed to know?

1842 Mr. {Bell.} Again, I think the chairman was given just
1843 enough information for them to understand what he wanted to
1844 do.

1845 Dr. {Cassidy.} Now, again, is that within the spirit of
1846 the law as originally--I mean, I can imagine somebody writing
1847 the law way back when. How do we account for a control freak
1848 who decides to only define as policy issues those things
1849 which are relatively unimportant, to define others as budget
1850 issues, and then to be selective in presentation. That would
1851 be very hard to write a statute to exclude what someone
1852 attempts to do. Was he within the spirit of the law in terms
1853 of communication with his fellow commissioners?

1854 Mr. {McMillan.} That, in fact, could be called into
1855 question as to whether or not he was within the spirit of the
1856 law as designed for an open collaborative engagement with the
1857 other commissioners.

1858 Dr. {Cassidy.} Now, as regards this question of fact
1859 because earlier, ma'am, you had mentioned it is a question of
1860 fact. The EDO suggests that he was told by the chairman not
1861 to do something but the chairman does not recall. A little
1862 bit of a dodge, but let us give it to him. Now, I have been

1863 deposed before and I watch law programs on TV. There is a
1864 milieu in which people try to establish which side of the
1865 question of fact is most likely true. Is there a pattern on
1866 one side of duplicity, of hiding, of ignoring the spirit of
1867 the law, again, doing whatever you can to avoid certain
1868 outcomes. Does this person have a motivation to not recall
1869 or is there, on the other side, such motivation? Now, it
1870 does seem as if, as I look at this question of fact, I am
1871 much more likely to believe the EDO and I am much more likely
1872 to think that if this were to go to some sort of judicial
1873 proceeding that the judge would be more likely to believe the
1874 EDO. Do you have any thoughts on that?

1875 Mr. {Bell.} I don't have any thoughts.

1876 Dr. {Cassidy.} Okay. Now, lastly, I see that in these
1877 confirmation hearings before the Senate in 2005, Mr. Jaczko
1878 said that he was going to recuse himself from all issues
1879 regarding Yucca Mountain for a year, and at that point he was
1880 hopeful to have demonstrated that he would absolutely be fair
1881 and objective and that there would not longer be a need to
1882 recuse himself. In your opinion, do the actions of the
1883 chairman indicate that he has been fair and objective
1884 regarding the Yucca Mountain issue?

1885 Mr. {Bell.} Well, I think the time frame that he
1886 referred to was when he was a commissioner--

1887 Dr. {Cassidy.} Yes?

1888 Mr. {Bell.} --and during that time frame, anything with
1889 Yucca Mountain he did recuse himself from.

1890 Dr. {Cassidy.} But that is not my question. My
1891 question is he said he did not need to recuse himself from
1892 consideration of Yucca Mountain issues throughout his entire
1893 tenure on NRC because he had proven himself to be fair and
1894 objective. I think that is fair and objective kind of like
1895 Fox News. Has he proven himself to be fair and objective in
1896 your opinion regarding Yucca Mountain?

1897 Mr. {Bell.} Well, not in terms of the information-
1898 sharing aspect of it anyway.

1899 Dr. {Cassidy.} Okay.

1900 Mr. {McMillan.} Also, sir, I wanted to clarify the
1901 questions you asked previously about direction from the White
1902 House. We did, in fact, ask that question and no one
1903 indicated that there was any direction from the President or
1904 the White House to close the program. That question was, in
1905 fact, asked.

1906 Dr. {Cassidy.} Thank you. I will yield back.

1907 Mr. {Green.} I was just going to say, Mr. Chairman,
1908 one, I didn't know it was so easy to get a law license. I
1909 watch it on TV. But I would agree that this chairman might
1910 be as fair and objective as Fox News is.

1911 Mr. {Shimkus.} We thank the ranking member for that
1912 interrogatory there.

1913 We do want to thank you for coming. We do appreciate
1914 the effort that you did and the position that you hold within
1915 the NRC is a tough position because you are checking up on
1916 yourself. And so we know you have worked diligently and we
1917 do appreciate it. And I want to thank you for coming and for
1918 the members who have participated and their devotion to the
1919 hearing today.

1920 The committee rules provide that members have 10 days to
1921 submit additional questions for the record to the witnesses.
1922 And then if you then receive those, if you would reply to us,
1923 we would appreciate that.

1924 Again, thanking you for your attendance, the hearing
1925 stands adjourned.

1926 [Whereupon, at 11:53 a.m., the subcommittee was
1927 adjourned.]