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4 HEARING ON ``NRC REPOSITORY SAFETY DIVISION - STAFF
5 PERSPECTIVE ON YUCCA LICENSE REVIEW''
6 FRIDAY, JUNE 24, 2011
7 House of Representatives,
8 Subcommittee on Environment and the Economy
9 Committee on Energy and Commerce
10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 9:57 a.m., in
12 Room 2322 of the Rayburn House Office Building, Hon. John
13 Shimkus [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Shimkus, Murphy,
15 Pitts, Sullivan, Latta, Gardner, Barton, Green, and Waxman
16 (ex officio).

17 Staff present: Allison Busbee, Legislative Clerk; Dave
18 McCarthy, Chief Counsel, Environment and the Economy; Chris

19 Sarley, Policy Coordinator, Environment and the Economy; Sam
20 Spector, Counsel, Oversight; Peter Spencer, Professional
21 Staff Member, Oversight; Tiffany Benjamin; Democratic
22 Investigative Counsel; Alison Cassady, Democratic Senior
23 Professional Staff Member; Greg Dotson, Democratic Energy and
24 Environment Staff Director; and Ali Neubauer, Democratic
25 Investigator.

|
26 Mr. {Shimkus.} The Subcommittee will now come to order,
27 and I recognize myself for 5 minutes for the purpose of an
28 opening statement.

29 Today we continue the committee's efforts to understand
30 the decision-making process at the NRC, in particular when it
31 comes to the closure of Yucca Mountain. Specifically we will
32 examine the views and perspective of the non-partisan NRC
33 staff that was responsible for conducting the safety
34 evaluation and technical reviews of the license application
35 for the Yucca Mountain repository and the controversial
36 efforts to shut this review down.

37 This hearing will provide a public face on the
38 professional people at NRC who have labored tirelessly,
39 outside the public spotlight, in good faith, to carry out the
40 Nuclear Waste Policy Act.

41 We will learn about the human effort that has gone into
42 planning for and reviewing the Yucca Mountain license, an
43 effort that represents first of its kind work. This is work
44 to ensure a repository will meet the EPA standards for 1
45 million years. The NRC has worked for more than 2 decades to
46 prepare for and to conduct the license evaluation.

47 This important job has required dedicated staff,
48 representing a range of scientific disciplines to do the

49 review with objectivity and integrity so the public can trust
50 the work. There are geochemists, hydrologists,
51 climatologists, various engineering disciplines, health
52 physicists, volcanologists and inspectors. The work NRC
53 staff has put into the Yucca Mountain license application has
54 been by all evidence world class, and we should expect no
55 less from the NRC. Now that very staff fears its work has
56 been caught up in a dysfunctional agency which is threatening
57 their ability to maintain public trust in the work they
58 produce.

59 We will hear from some of the people who would ensure
60 that, should NRC approve DOE's license application for Yucca
61 Mountain, the repository will be safe. We should not forget
62 how much money and human effort has gone into development of
63 this project. To date we have spent \$15 billion, probably
64 half a billion dollars alone by the NRC. The American rate
65 payer and taxpayer are owed something for this effort, yet
66 that effort risks getting swept away by the political agenda
67 of this Administration and the NRC chairman.

68 It is important for this committee to gather information
69 about what is behind the license review work in terms of
70 staff expertise, years of commitment and integrity.

71 We want to learn the facts about the status of their
72 work: Is it complete, what else needs to be done, and what

73 kind of direction they received from the Chairman and the NRC
74 management to shut down their work. Last week we took
75 troubling testimony from the Inspector General about the
76 Chairman's influence and actions to strategically work to
77 impose his views on the Commission. Now we find this virus
78 has infected even deeper than we imagined with manipulation
79 by senior management of career staff's scientific findings.

80 These staff who worked on the program can explain
81 exactly where they were in completing their work. They can
82 explain what they were doing to carry out their
83 responsibilities under the Nuclear Waste Policy Act and how
84 the Chairman's and Commission's actions affected this
85 activity. And they can explain what they believe it will
86 take to resurrect the review of the Yucca Mountain
87 application.

88 We can also get the facts about the current efforts to
89 preserve the staff's decades of work on this project and
90 whether those efforts will provide the public a full view of
91 their analysis. This is new information we will examine
92 today to determine whether staff continues to be restricted
93 in providing a full and transparent report of their work to
94 the public, which has been promised by the Chairman.

95 We want to understand how information flows from staff
96 who seek policy guidance up to the Commission and how that

97 has been handled when it comes to the Yucca Mountain license
98 and whether they believe staff is getting the support it
99 needs from management, the Chairman and the Commission.

100 Let me express my gratitude to the witnesses from the
101 division level, Dr. Kotra, Dr. Stablein, Mr. Mohseni, and Mr.
102 Kokajko, and their supervisor, Ms. Haney, for taking the time
103 to appear today. It is unusual to hear directly from staff,
104 but this Yucca Mountain matter is unusual itself, and your
105 testimony is very important to our investigation.

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

107 ***** COMMITTEE INSERT *****

|
108 Mr. {Shimkus.} And I do appreciate your attendance.
109 And with that I yield back my time, and I will turn now to
110 the Ranking Member, Mr. Green, for 5 minutes.

111 Mr. {Green.} Thank you, Mr. Chairman. Thank you,
112 witnesses, for your patience. I apologize for running late.

113 Thank you for holding the hearing. I want to thank our
114 witnesses like our Chair did for appearing before the
115 Committee to discuss the issue of Yucca Mountain.

116 As you know, I have recently toured Yucca Mountain and
117 went on a CODEL organized by Chairman Shimkus, and I
118 appreciate the opportunity to view the facility up close and
119 to meet with local individuals to hear their thoughts on
120 Yucca Mountain.

121 There has been a lot of discussion on this committee on
122 the decision by the Administration not to proceed with Yucca
123 Mountain. We have had a long series of hearings related to
124 the majority's ongoing investigation. Today we will hear
125 from the NRC staff on their thoughts regarding Yucca
126 Mountain, whether they feel the issue was properly handled.

127 I appreciate hearing from staff. I have read the
128 testimony, and this is beginning to sound like we are airing
129 the NRC's dirty laundry. But it seems like we do that in
130 Congress pretty often.

131 On June 14, this committee held a hearing with the NRCIG
132 on the report entitled The NRC's Chairman's Unilateral
133 Decision to Terminate the NRC's Review of the DOE Yucca
134 Mountain Repository License Application. The Inspector
135 General's report found that Chairman Jaczko had not been
136 forthcoming with the Commissioners but that ultimately he
137 acted within his authority as NRC Chair, none of which
138 suggests the NRC violated the law.

139 The report also did not review whether or not the actual
140 decision to close Yucca was appropriate. The report did shed
141 some light on obviously internal issues within NRC that
142 should be evaluated and address and which we will hear about
143 yet again today.

144 I appreciate the Chair's desire to continue to hold the
145 hearings on Yucca Mountain. As I have stated several times,
146 the United States alone produced 806 billion kilowatt hours
147 of nuclear power in 2008 making us the biggest producer of
148 nuclear power in the world. No matter what decision we make
149 on Yucca Mountain, we still have a nuclear waste disposal
150 issue. So the 25-year-old Yucca Mountain dilemma remains,
151 and we need to resolve the situation sooner rather than
152 later. However, a lot of the committee and personal staff in
153 this room should be working on coal ash legislation and
154 negotiations right now, and the time that were spent on this

155 Yucca Mountain hearings could have been spent on other issues
156 before our committee.

157 I hope when we return from the recess we have a
158 bipartisan coal ash bill to mark up, Mr. Chairman, in the
159 Full Committee, and we can begin working on other issues in
160 our jurisdiction. I yield back my time.

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

162 ***** COMMITTEE INSERT *****

|
163 Mr. {Shimkus.} The gentleman yields back his time. The
164 Chair now recognizes the Vice Chairman of the Subcommittee,
165 Mr. Murphy, for 5 minutes.

166 Mr. {Murphy.} Thank you, Mr. Chairman. I know we have
167 been delayed here, and it is important we hear the witnesses.
168 So I am going to waive my opening statement and just submit
169 it for the record.

170 [The prepared statement of Mr. Murphy follows:]

171 ***** COMMITTEE INSERT *****

|
172 Mr. {Shimkus.} The gentleman yields back his time. The
173 Chair now recognizes the Ranking Member of the Full
174 Committee, Chairman Emeritus, Mr. Waxman, for 5 minutes.

175 Mr. {Waxman.} Thank you very much, Mr. Chairman. This
176 is the fourth hearing this subcommittee has held on the Yucca
177 Mountain Nuclear Waste Repository, and today's hearing will
178 examine the concerns of some of the NRC staff about the
179 decision to terminate the NRC's review of Yucca Mountain.

180 I appreciate the witnesses being here today and share in
181 their concerns with the committee. I can understand why
182 technical staff, who have worked for years on Yucca Mountain,
183 are frustrated and angry that the NRC may never approve or
184 deny the license application. I believe they care deeply
185 about the mission of the NRC and its role as an independent
186 agency. But what I have a hard time accepting is the
187 assertion that the decision to cease review of the license
188 application at NRC was somehow a unilateral decision by a
189 rogue chairman.

190 The Secretary of Energy determined that Yucca Mountain
191 is not a workable option. The Department of Energy, which
192 would be responsible for actually building the repository and
193 managing the waste, asked to withdraw the license
194 application. In the fiscal year 2011 budget passed in April,

195 to avert a government shutdown, Congress allocated no money
196 to DOE for Yucca Mountain and just \$10 million to NRC to
197 close down the licensing review. For fiscal year 2012, the
198 NRC Commissioners approved a budget requesting just \$4
199 million in order to terminate all Yucca Mountain program
200 activities. And OMB allocated no money to NRC for the high-
201 level waste program for 2012.

202 I understand why some members believe the decision to
203 shut down the review of Yucca Mountain was political, but
204 from what I have seen, the key decision was DOE's. DOE
205 decided to withdraw the license application. Once DOE made
206 this decision, the NRC's options were limited. Continuing
207 its review risks squandering millions of taxpayer dollars.

208 While I have said on several occasions that the Yucca
209 Mountain project merits independent and objective oversight,
210 I am also concerned that this Subcommittee's myopic focus on
211 Yucca Mountain has diverted its attention from other pressing
212 nuclear safety issues.

213 This week we learned of significant nuclear safety
214 problems in the United States from two different sources.
215 First, Congressmen Ed Markey and Peter Welch released a GAO
216 report about radioactive leaks from underground pipes at the
217 Nation's nuclear power plants. As nuclear power plants age,
218 their underground piping tends to corrode. But the condition

219 of many underground pipes at plants across the country is
220 unknown. GAO noted in its report that NRC has no plans to
221 evaluate the extent to which volunteering industry
222 initiatives are adequate to detect leaks and corrosion in
223 these underground pipes. As a result, GAO found that NRC has
224 ``no assurance'' that these initiatives will promptly detect
225 leaks before they pose a risk to public health and safety.
226 We ought to be holding a hearing on that subject.

227 Second, an investigation by the Associated Press
228 concluded that federal regulators at NRC have been working
229 closely with the nuclear power industry to keep the Nation's
230 aging reactors operating within safety standards by weakening
231 those standards or not enforcing them. The AP investigation
232 found what it called a recurring pattern. ``Reactor parts or
233 systems fall out of compliance with the rules. Studies are
234 conducted by the industry and government, and all agree that
235 existing standards are unnecessarily conservative.
236 Regulations are loosened, and the reactors are back in
237 compliance.'' We ought to be investigating that issue.

238 The GAO report and AP investigations raise serious
239 concerns about the safety of reactors in the United States,
240 especially as NRC continues to consider and approve
241 additional license extensions for the aging fleet.

242 But we aren't talking about that today. We are again

243 talking about Yucca Mountain, a program with no funding and
244 no apparent future. I question whether this is the right
245 priority for our Nation.

246 With that said, I thank the witnesses for being here
247 today. I look forward to their testimony. I understand
248 their concerns. I feel their pain. But if DOE puts in an
249 application and DOE withdraws its application, it is hard to
250 rule on that application. And then when with this funding no
251 longer available, I don't know what NRC, under any chairman,
252 could do under those circumstances.

253 I yield back my time.

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

255 ***** COMMITTEE INSERT *****

|
256 Mr. {Shimkus.} The gentleman yields back his time.
257 They have called one vote on the Floor, so I think the way we
258 will proceed, if it is okay with my friends in the minority,
259 is that we will go vote, then we will come back and then we
260 will start your testimony after we do the swearing in. And
261 with that I will call--

262 Mr. {Pitts.} Mr. Chairman, that would be what, about 10
263 minutes we should be back, 10, 15 minutes?

264 Mr. {Shimkus.} Well, it is a 15-minute vote, so I would
265 say we will start in 15 or 20 minutes. And I want to ask
266 unanimous consent that anyone who has a written opening
267 statement they want to submit for the record be allowed to do
268 so. Without objection, so ordered. The hearing is recessed.

269 [Recess.]

270 Mr. {Shimkus.} I will call the hearing back to order,
271 and you are at your desk but the Chair will call you, the
272 witnesses, which is Dr. Janet P. Kotra, Senior Project
273 Manager in the Division of High-Level Waste for Repository
274 Safety at the NRC; Dr. N. King Stablein, Branch Chief in the
275 Division of High-Level Waste Repository Safety at the NRC;
276 Mr. Aby Mohseni, Acting Director in the Division of High-
277 Level Waste Repository Safety at the NRC; Mr. Lawrence
278 Kokajko, Acting Deputy Director for the Office of Nuclear

279 Material Safety and Safeguards at the NRC; and Ms. Catherine
280 Haney, Director of the Office of Nuclear Material Safety and
281 Safeguards at the NRC. Again, thank you for joining us.

282 As you know, the testimony that you are about to give is
283 subject to Title 18, Section 1001, of the United States Code.
284 When holding an investigative hearing, this Committee has the
285 practice of taking testimony under oath. Do you have any
286 objection to testifying under oath?

287 Mr. {Stablein.} No.

288 Mr. {Mohseni.} No.

289 Mr. {Kokajko.} No.

290 Ms. {Kotra.} No.

291 Ms. {Haney.} No.

292 Mr. {Shimkus.} For the record, all respondents stated
293 no. The Chair then advises you that under the rules of the
294 House and the rules of the Committee, you are entitled to be
295 advised by counsel. Do you desire to be advised by counsel
296 during your testimony today?

297 Ms. {Kotra.} No.

298 Mr. {Stablein.} No.

299 Mr. {Mohseni.} No.

300 Mr. {Kokajko.} No.

301 Ms. {Haney.} No.

302 Mr. {Shimkus.} And the Chair acknowledges that all

303 participants stated no. In that case, if you would please
304 rise and raise your right hand, I will swear you in.

305 [Witnesses sworn.]

306 Mr. {Shimkus.} Thank you very much, we will now go into
307 a 5-minute summary of your statement, and we would like to
308 start left to right with Dr. Kotra. Thank you, ma'am. I
309 appreciate you being here. And you are recognized for 5
310 minutes.

|
311 ^TESTIMONY OF JANET P. KOTRA, PH.D., SENIOR PROJECT MANAGER,
312 DIVISION OF HIGH-LEVEL WASTE FOR REPOSITORY SAFETY, NUCLEAR
313 REGULATORY COMMISSION; DR. NEWTON KINGMAN STABLEIN, BRANCH
314 CHIEF, DIVISION OF HIGH-LEVEL WASTE FOR REPOSITORY SAFETY,
315 NUCLEAR REGULATORY COMMISSION; ABY MOHSENI, ACTING DIRECTOR,
316 DIVISION OF HIGH-LEVEL WASTE REPOSITORY SAFETY, NUCLEAR
317 REGULATORY COMMISSION; LAWRENCE KOKAJKO, ACTING DEPUTY
318 DIRECTOR, OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS,
319 NUCLEAR REGULATORY COMMISSION; AND CATHERINE HANEY, DIRECTOR,
320 OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS, NUCLEAR
321 REGULATORY COMMISSION

|
322 ^TESTIMONY OF JANET P. KOTRA

323 } Ms. {Kotra.} Good morning, Chairman Shimkus, Mr. Green
324 and members of the Subcommittee. Thank you for inviting me
325 to participate in your hearing today. My name is Janet
326 Kotra. I work as a senior scientist and project manager in
327 the Division of High-level Waste Repository Safety at the
328 NRC. I joined NRC more than 27 years ago as a postdoctoral
329 fellow. I have been one of the major contributors in
330 developing NRC's regulations for the proposed Yucca Mountain
331 Repository. Along with my scientific and engineering

332 colleagues, I have participated in the NRC staff's
333 independent safety review of the license application for the
334 proposed repository at Yucca Mountain and in preparing
335 portions of the NRC staff's Safety Evaluation Report which
336 you will often hear referred to as the SER.

337 As leader of NRC's high-level waste public outreach
338 team, it has also been my job to organize and conduct more
339 than three dozen public meetings and workshops in Nevada and
340 California to explain NRC's oversight role, regulatory
341 process and review procedures.

342 Of the many hats that I have worn at NRC over the years,
343 this is by far been one of the most personally satisfying and
344 enriching. I spent more than 10 years on the road meeting
345 with people of the affected units of local government and
346 from the affected tribe near Yucca Mountain, Nevada, the
347 Timbisha Shoshone.

348 I spoke with people about NRC's oversight role and
349 review procedures. I helped individuals and local officials
350 understand their options for participating in NRC's hearing
351 process. I explained how the NRC staff reviews and considers
352 public comments on proposed NRC regulations. I listened to
353 people's concerns and learned how to be more effective as a
354 public servant. Among the comments I heard over and over
355 again were how will NRC make its safety decision and how can

356 we affect NRC's decision or take part in your process, if we
357 don't understand how your decisions are made? Over the
358 course of those 10 years, we worked hard at becoming more
359 transparent. We took the steps needed to make our speech
360 clearer, our documents more available and our presentations
361 more understandable. We assured our audiences that once the
362 application came in, we, as independent scientists and
363 engineers, would conduct a thorough, technically sound and
364 fair review. We also promised that our findings in the form
365 of an SER would be made available for all to see and evaluate
366 for themselves. And then, those findings, along with the
367 application and all contentions admitted by an independent
368 hearing board, and there were almost 300 of them, would be
369 subject to an open and impartial hearing before any decision
370 would be made to deny or authorize construction of a
371 repository at Yucca Mountain. I assured people over and over
372 again that this would be the case because I believed it
373 myself. I believed it because this is how NRC conducts
374 business. This is how NRC's licensing process has worked
375 when NRC decided whether or not to license reactors or other
376 large nuclear facilities throughout our more than 35-year
377 history. And I believed it because it is consistent with the
378 law, consistent with NRC's regulations, and consistent with
379 our role as an independent safety regulator as established

380 for us by you, the Congress.

381 Then, as reported recently by the NRC's Inspector
382 General, Chairman Jaczko ordered staff to postpone issuance
383 of SER Volumes 1 and 3. Division staff and managers became
384 concerned that the other Commissioners might not be fully
385 aware of the policy, legal and budgetary consequences of such
386 redirection and felt that guidance from the entire Commission
387 was called for.

388 I was directed to prepare a staff memorandum for all
389 five Commissioners to be signed by the Office Director, Ms.
390 Haney. We hoped that given an honest assessment of the
391 facts, fair-minded Commissioners would see the need to
392 provide staff with clear policy direction as we struggled to
393 honor our conflicting duties and instructions. We were told,
394 however, that the memorandum should make no reference to any
395 of the related policy issues and that I should prepare it
396 only as a status report.

397 Over the coming months, using a highly irregular
398 process, I was asked to incorporate an inordinate number of
399 changes from senior agency managers. I was willing to
400 comply, despite my growing reservations, so long as
401 descriptions of the program's history and status remained
402 reasonably accurate and consistent with my knowledge of the
403 facts.

404 Only later, in September of last year did it become
405 clear that rather than to just postpone issuance of
406 individual SER volumes, the Chairman's intent was to
407 terminate the staff's safety review altogether. Using the
408 continuing resolution as justification, the Chairman directed
409 that all work on the SER must stop, including Volume 3 on
410 post-closure safety, which was already complete, and
411 undergoing management review. Written guidance came later on
412 October 4. The Chairman met with us in the staff's Yucca
413 Mountain team meeting just after Columbus Day. He explained
414 that the decision to shut down the staff's review was his
415 alone and that the staff should move to shut down the NRC's
416 Yucca Mountain program altogether. This, despite the fact
417 that then, as now, the Nuclear Waste Policy Act remains in
418 effect, the hearing process continues, and I would have to
419 disagree with Mr. Waxman's assertion, and no Commission
420 decision has even today been issued on whether the
421 application can be legally withdrawn.

422 As the months wore on and work on the memorandum
423 continued, formal and informal comments from the Deputy
424 Executive Director for Operations, the Chief Financial
425 Officer and the General Counsel were incorporated. These
426 comments repeatedly diluted or contradicted the language
427 prepared by the high-level waste staff and staff of the

428 Atomic Safety and Licensing Board Panel. Both had described
429 the severe difficulties faced by our offices struggling to
430 cover the costs of shutting down a complex and valuable
431 national program and infrastructure, while at the same time
432 supporting an ongoing hearing.

433 Eventually, I could no longer, in good conscience, agree
434 with the memo I was preparing. I formally withdrew my
435 concurrence, consistent with NRC's procedures, on February 1
436 of this year. I did so because senior managers insisted on
437 changes that, to me, implied that it was the NRC staff who
438 voluntarily, or, worse still, on its own volition, terminated
439 NRC staff's independent review of the Yucca Mountain License
440 application and sought to end support for a full and
441 impartial hearing to review the application.

442 Gentlemen, to me, this was grossly misleading and
443 unacceptable. My colleagues who worked tirelessly to conduct
444 a fair, independent and technically sound safety review and
445 to prepare the required SER, stood down from those
446 obligations only with enormous reluctance and heavy hearts.

447 Let me be very clear. We did not choose to abandon our
448 duty under the law. We were directed explicitly by Chairman
449 Jaczko to terminate our review. Yet, on multiple occasions I
450 was prohibited from including in the status report any
451 statement to that effect. The memorandum made no reference

452 to the facts surrounding the termination of the staff's
453 safety review. Without this crucial context, the reader is
454 left with a mistaken impression that the termination and
455 orderly shutdown of the licensing review and hearing was the
456 staff's preferred and well-considered course of action,
457 initiated by the technical staff. Nothing could be further
458 from the truth.

459 In closing, as a member of the NRC's technical staff, I
460 remain deeply concerned that the ground-breaking regulatory
461 work accomplished over so many decades by my colleagues not
462 be lost or wasted. This seminal work is documented in the
463 draft SER volumes staff has prepared. Irrespective of what
464 ultimately becomes of Yucca Mountain, preservation and
465 dissemination of the results of NRC staff's review and
466 findings are of critical importance to future decisions
467 regarding disposition of the Nation's high-level waste and
468 spent nuclear fuel. The public deserves access to what we
469 learned and accomplished during our safety review. If the
470 Blue Ribbon Commission does indeed find that deep geologic
471 disposal is inescapable as a solution for our Nation's spent
472 fuel and high-level radioactive wastes, the lessons that
473 NRC's technical staff learned from reviewing and evaluating
474 compliance of the first license application for a geologic
475 repository in the United States must be preserved, studied

476 and shared as the resources they truly are.

477 Please help us, the NRC technical staff, keep the
478 commitments we made to the public about the openness and
479 transparency of NRC's safety review at Yucca Mountain. I
480 implore you to take whatever action you deem necessary to
481 allow completion and prompt, public release of the complete,
482 unredacted and uncensored volumes of the NRC staff's SER.

483 I want to thank you for your concern and attention to
484 these important matters, and I welcome any questions you may
485 have.

486 [The prepared statement of Ms. Kotra follows:]

487 ***** INSERT 1 *****

|
488 Mr. {Shimkus.} Thank you very much for your testimony.
489 Now we would like to turn to Dr. N. King Stablein, Branch
490 Chief of the Division of High-Level Waste Repository Safety.
491 Sir, your full statement is in the record. You have 5
492 minutes.

|
493 ^TESTIMONY OF NEWTON KINGMAN STABLEIN

494 } Mr. {Stablein.} Good morning, Chairman Shimkus, Mr.
495 Green, and members of the Subcommittee. Thank you for
496 inviting me to participate in your hearing today.

497 My name is Dr. Newton Kingman Stablein. I have spent
498 most of my 27 years at the NRC involved in NRC's prelicensing
499 and licensing activities related to DOE's efforts to support
500 an application to construct a high-level waste geological
501 repository at Yucca Mountain. I am currently Chief of the
502 Project Management Branch responsible for leading the review
503 of DOE's license application by the NRC staff and its
504 contractor since 1987, the Center for Nuclear Waste
505 Regulatory Analyses.

506 The NRC received DOE's license application in June of
507 2008 and, after completing an acceptance review, docketed the
508 application in September 2008. The NRC staff prepared to
509 complete its review of DOE's application and production of
510 its Safety Evaluation Report, or SER, within approximately 18
511 months, by March or April 2010.

512 In March 2009, the Executive Director for Operations
513 informed the Commission that because of reduced resources in
514 the fiscal year 2009 budget and expected cuts in fiscal year

515 2010, the NRC staff would complete the SER in fiscal year
516 2012, 2 years later than the original schedule. The staff
517 revamped its plans for the SER, opting to issue it in five
518 separate volumes on a staggered schedule, with the first
519 volume to be published in March 2010.

520 In January 2010, the staff informed the Atomic Safety
521 and Licensing Board that the NRC staff would issue Volume 1
522 on general information and Volume 3 the post-closure volume,
523 by no later than August and November 2010, respectively.

524 The staff had Volume 1 ready for publication in June
525 2010, 2 months ahead of the August target. Around the same
526 time, Chairman Jaczko issued a memorandum to the EDO stating
527 that it was in the best interests of the Agency ``not to
528 alter the schedule for the completion of SER volumes at this
529 time'' and directing that Volume 1 be published no earlier
530 than August 2010. He added that subsequent volumes should be
531 issued consistent with and not earlier than the schedule
532 provided to the Commission in March 2010. Volume 1 was
533 published in August 2010.

534 Volume 3 could have been ready for publication in
535 September, but because the Chairman had directed staff not to
536 issue it before November 2010, the final review steps leading
537 to its publication were slowed.

538 The staff expected to publish Volume 3 in November 2010

539 and the other three volumes by March 2011. However, on
540 September 30, the Director of the Office of Nuclear Material
541 Safety and Safeguards instructed NRC staff to transition
542 immediately to closure of Yucca Mountain licensing activities
543 and to cease work on the SER volumes. Within the next couple
544 of weeks, the Chairman met with staff and affirmed that it
545 was his decision to discontinue work on the SER and to
546 transition to closure activities, including the issuance of
547 technical evaluation reports, or TERs, instead of the SER
548 volumes.

549 This decision had a profound impact on the Yucca
550 Mountain team and its program. As a supervisor in this
551 program, I am keenly aware of the agony experienced by the
552 NRC staff as it dutifully followed the Chairman's direction.
553 Many of the staff have worked on the Yucca Mountain program
554 for two decades or longer. To be denied the opportunity to
555 finish the SER because of what appeared to be the arbitrary
556 decision of one individual, was wrenching. The staff was not
557 aware of any substantive discussion and airing of issues at
558 the Commission level, as would be expected for a decision of
559 this magnitude.

560 Although the staff was deeply affected by the Chairman's
561 decision, it acted immediately to follow his direction to
562 develop TERs with no regulatory findings in place of the

563 planned SER volumes. On March 31, 2011, the staff presented
564 the post-closure TER to NMSS management for approval to
565 publish. Over 2 months later, the NMSS office director
566 disapproved publication of the document in its present form
567 and that stated that it would need modifications to be
568 published.

569 These latest developments are the most recent and
570 clearest example of how the staff has been denied the
571 opportunity to fulfill its duty to make its technical
572 insights and information available to the Nation and to
573 thereby enrich the ongoing discussion about what path to
574 follow in dealing with nuclear waste. The work of a
575 generation of scientists and engineers continues to be
576 systematically suppressed to the detriment of these patriots
577 and the Nation at large. Thank you.

578 [The prepared statement of Mr. Stablein follows:]

579 ***** INSERT 2 *****

|

580 Mr. {Shimkus.} Thank you for your testimony. Now, I
581 would like to turn to Mr. Aby Mohseni, Acting Director in the
582 Division of High-Level Waste Repository Safety. Welcome.
583 Your full statement is into the record, and you have 5
584 minutes.

|
585 ^TESTIMONY OF ABY MOHSENI

586 } Mr. {Mohseni.} Thank you very much Mr. Chairman,
587 Ranking Member Green, and Members of the Committee, for the
588 opportunity to be here today. My name is Aby Mohseni. I
589 worked for the State of Washington before joining the NRC in
590 1990. I became the Deputy Director for Licensing and
591 Inspections in the Division of High-Level Waste Repository
592 Safety in 2006. I am currently the Acting Director of this
593 Division. I will briefly describe the division's role,
594 accomplishments and challenges.

595 The U.S. Congress enacted the Nuclear Waste Policy Act
596 directing and entrusting the NRC scientists to determine the
597 safety and security of the Yucca Mountain Geological
598 Repository for the Nation. NRC has invested almost 3 decades
599 preparing for and conducting a safety review of the proposed
600 Yucca Mountain design.

601 My staff and I are quite used to challenges. Reviewing
602 the performance of a mountain over time frames of a million
603 years using a first-of-a-kind, risk-informed, performance-
604 based methods is a challenge. But that scientific challenge
605 seemed to be the easy one. Less than a year after the
606 Department of Energy submitted its long-awaited license

607 application to build a geological repository at Yucca
608 Mountain, Nevada, in 2008, our budget was cut by 30 percent.
609 Despite that and subsequent cuts, we, NRC staff and
610 scientists, impressed with the task entrusted to us for the
611 Nation's safety, absorbed the pressures and maintained our
612 focus on our mission.

613 Although resilient from our adaptation to budgetary
614 pressures, we were unprepared for the political pressures and
615 manipulation of our scientific and licensing processes that
616 would come with the appointment of Chairman Jaczko in 2009.
617 We believe that any political manipulation of the scientific
618 and licensing process is an assault on the responsibility to
619 the NRC mandated by Congress.

620 We staff felt that manipulation at the Commission level,
621 as described in the NRC's Inspector General report issued
622 earlier this month, permeated the activities of my division
623 by some senior managers.

624 For example, some NRC senior managers directed the staff
625 to suppress information to the Commission by providing them a
626 status report instead of a policy report on the closure of
627 Yucca Mountain. Whereas a policy report empowers the
628 Commission with the staff's findings and recommendations
629 required to make sound policy for the Nation's safety, a
630 status report merely informs them of decisions made, leaving

631 the burden of discovery on individual Commissioners.

632 Additionally, some senior managers contributed to the
633 manipulation of the budget process and information to
634 apparently make sure that the Yucca Mountain project would be
635 left unfunded even if the license application was still
636 before the NRC.

637 Furthermore, apparently at the direction of the Chairman
638 and with the aid of some senior managers, the disclosure to
639 the rest of the Commission of the staff's views on the
640 impacts of budget cuts and allocations were suppressed. I
641 note that keeping the full Commission fully and currently
642 informed is a statutory requirement.

643 Despite being entrusted with independent decision
644 making, when confronted with these concerns by the Office of
645 Inspector General, these senior managers essentially
646 responded that the Chairman's office made them do it. I ask
647 who holds these managers accountable? Chairman Jaczko?

648 We at the NRC are at a crossroads. Apparently, the
649 NRC's senior leadership is ineffective in upholding the
650 integrity of this Agency. Politics are influencing some of
651 the NRC's staff's work. The question is, could politics at
652 some point affect the staff's technical and regulatory
653 findings and decisions? This is not where an independent
654 safety organization should be. If the NRC were to find any

655 of our licensees so lacking, we would require of them a
656 corrective action plan. We should hold ourselves at least to
657 the same standards. The NRC needs to enact a corrective
658 action plan.

659 I cannot overemphasize the importance of your oversight
660 role. If it were not for your oversight, much of what has
661 been revealed would remain behind closed doors. Given the
662 recent revelations, I am not sure that you, the oversight
663 Committee, made up of the representatives of the citizens of
664 United States of America, entrust us at the NRC to always be
665 and remain objective, independent and credible to ensure the
666 health and safety of the American public. We need to re-earn
667 your trust.

668 Thank you for this opportunity.

669 [The prepared statement of Aby Mohseni follows:]

670 ***** INSERT 3 *****

|
671 Mr. {Shimkus.} Thank you, Mr. Mohseni. Now I would
672 like to turn to Mr. Lawrence Kokajko, Acting Deputy Director
673 for the Office of Nuclear Material Safety and Safeguards at
674 the NRC. Sir, again, your full statement is in the record.
675 You have 5 minutes.

|
676 ^TESTIMONY OF LAWRENCE E. KOKAJKO

677 } Mr. {Kokajko.} Thank you. Mr. Chairman, Ranking Member
678 Green, and members of the Subcommittee, my name is Lawrence
679 Kokajko, and I am honored to appear before you today to
680 provide my perspective on those internal NRC issues--

681 Mr. {Shimkus.} Can you check--

682 Mr. {Kokajko.} Perspective on those internal issues--

683 Mr. {Shimkus.} And I hate to interrupt you. Maybe pull
684 it a little bit closer to you.

685 Mr. {Kokajko.} Hello?

686 Mr. {Shimkus.} That is much better.

687 Mr. {Kokajko.} Thank you. I will just start over, if
688 you don't mind. Mr. Chairman, Ranking Member Green, and
689 members of the Subcommittee, my name is Lawrence Kokajko, and
690 I am honored to appear before you today to provide my
691 perspective on those internal issues associated with the
692 review of the Department of Energy's license application for
693 the proposed repository at Yucca Mountain, Nevada.

694 Currently, I am the acting Deputy Office Director for
695 the Office of Nuclear Material Safety and Safeguards,
696 although my official position is the Director of the Division
697 of High-Level Waste Repository Safety. I have been with the

698 NRC since 1989, and I have regulatory experience in reactors,
699 materials and waste.

700 I had always wanted to be associated with a program of
701 national significance, and when the opportunity to be the
702 Director presented itself, I enthusiastically accepted. Part
703 of my enthusiasm was due to the repository safety staff
704 itself. All employees of the NRC are dedicated to its
705 mission to assure safety, security and environmental
706 protection, and the members of the repository safety division
707 are no exception.

708 Moreover, in 1987, agency leadership, with great
709 foresight, contracted with the Southwest Research Institute
710 that organized the Center for Nuclear Waste Regulatory
711 Analyses as the NRC's only federally-funded research and
712 development center and to be a conflict-of-interest free
713 entity. Both the NRC and Center employees have expertise in
714 geological and related sciences and engineering, and they are
715 dedicated professionals that have spent decades in
716 preparation for this application.

717 Besides wanting to work on a program of national
718 significance, I wanted to work with these talented
719 professionals. I recognized their unique set of knowledge,
720 skills and abilities and the challenging subject matter and
721 context for this important major federal action. Quite

722 frankly, I am very concerned about the loss of this disposal
723 expertise as spent nuclear fuel continues to increase and the
724 U.S. program is now uncertain. I hasten to add that geologic
725 disposal remains the internationally recognized means to
726 isolate high-level radioactive waste for very long time
727 periods.

728 The Nuclear Regulatory Commission is an independent
729 agency, and as such, the agency has the responsibility to
730 demonstrate this independence by openness and transparency in
731 its deliberations and decision making. This can be displayed
732 by collaborating and assuring all information is available
733 and discussed. Agency independence and internal processes
734 should be jealously guarded, and the appearance of political
735 influence in such deliberations and decision-making should be
736 avoided at all costs.

737 Given that the Congress did not amend the Nuclear Waste
738 Policy Act or enact other legislation to discontinue
739 development of Yucca Mountain, other legitimate internal
740 processes could have occurred. For example, the Atomic Safety
741 and Licensing Board could have agreed that the Department of
742 Energy could withdraw the repository application; the
743 Commission itself could have overturned the June 29, 2010,
744 Atomic Safety and Licensing Board's decision promptly; or
745 alternatively, the collective Commission could have decided

746 through a vote and subsequent staff requirements memorandum
747 that the staff should formally suspend its review pending
748 legislative or other adjudicatory action.

749 Staff would have willingly followed any outcome from a
750 faithfully executed legitimate process. Until such decision,
751 staff was under the distinct impression that it could
752 continue its safety review as long as sufficient funding
753 existed. Further, I would go so far to say that many think
754 as I do, the Nation paid for this review, and the Nation
755 should get it.

756 I would like to have seen the Commission act collegially
757 to address this issue. As noted in the recent Office of
758 Inspector General report, the decision to close the program
759 by the end of fiscal year 2011 was made without the entire
760 Commission being fully informed or acting in concert. When
761 this became apparent, executive staff leadership should have
762 acted as a brake to afford the Commission information and
763 time to assess and develop appropriate program direction.
764 This would have enabled more budget and program information
765 to rise to the entire Commission and would have precluded
766 decisions based on incomplete information or perception.

767 Regardless of the NRC's evaluation of the technical
768 merits of the application, the staff takes no position on
769 actual construction and operation of a proposed repository.

770 Ultimately, it is up to the Congress to determine whether to
771 build and operate the facility. Any such national policy
772 decision by Congress would be based upon the science and
773 engineering performed by the Department of Energy and the
774 subsequent safety evaluation and adjudication by the NRC,
775 assuring that this meets the standards set by the
776 Environmental Protection Agency.

777 NRC requires complete and accurate information in all
778 material respects in relation to the repository license
779 application. The Department of Energy has not identified a
780 safety defect in the application; thus, it remains valid and
781 before the NRC. I believe science and the scientific process
782 must inform and guide NRC's regulatory decision making. I
783 further believe we have been open and transparent with our
784 stakeholders with regard to our regulatory duties as this
785 Chairman and this Commission have emphasized. Technical
786 staff associated with this program are dismayed by what has
787 happened thus far, and we would hope the day comes soon when
788 we can return to being boring regulators.

789 For the record, this is not meant to be a pejorative
790 remark. Our mission and our work are vitally important to
791 the Nation, and we take our responsibility seriously. The
792 Agency should always be in the background as the fundamental
793 pillar, assuring safety as our number one priority, keeping

794 in mind that we must be ever vigilant. This is not exciting
795 work to many, but we all appreciate our roles as federal
796 employees, assuring the safety of our fellow citizens. This
797 current situation is distracting and does the Agency and its
798 people no good.

799 Thank you.

800 [The prepared statement of Mr. Kokajko follows:]

801 ***** INSERT 4 *****

|
802 Mr. {Shimkus.} Thank you. And we will now turn to Ms.
803 Catherine Haney, Director of the Office of Nuclear Materials
804 Safety and Safeguards at the NRC. Again, full statement is
805 in the record. You have 5 minutes and welcome.

|
806 ^TESTIMONY OF CATHERINE HANEY

807 } Ms. {Haney.} Thank you. Good morning, Chairman Shimkus
808 and Ranking Member Green and members of the Subcommittee. I
809 am Catherine Haney. I am the Director of the Office of
810 Nuclear Material Safety and Safeguards at the NRC. I have
811 held this position since May 10 of 2010, previously serving
812 as Deputy Director in the office. I am responsible for
813 management and oversight of three program areas at NRC, the
814 fuel cycle safety and safeguards, spent fuel storage and
815 transportation and high level waste repository safety.

816 I am here today to discuss our activities regarding the
817 NRC's regulatory oversight of the proposed Yucca Mountain
818 high-level nuclear waste repository.

819 The Department of Energy submitted a license application
820 in June 2008 to seek authorization to construct the geologic
821 repository at Yucca Mountain. The NRC accepted the
822 application for review in September 2008 and commenced a two-
823 pronged review process, first, the technical review of the
824 license application by the NRC staff and second, a hearing
825 process before the Atomic Safety and Licensing Board. The
826 results of the staff's technical evaluation are to be
827 documented in a Safety Evaluation Report.

828 Before I was appointed by the Commission to the position
829 of Office Director in May 2010, the Department of Energy had
830 filed a motion to withdraw the Yucca Mountain application
831 before the Atomic Safety and Licensing Board. As a result,
832 my predecessor had directed the staff to start planning an
833 orderly closure as a contingency and for documenting the
834 licensing review while we continued our development of the
835 remaining volumes of the Safety Evaluation Report. At the
836 end of June 2010, the Licensing Board denied DOE's request to
837 withdraw the license application. This decision by the Board
838 has been under review by the Commission since early July
839 2010. The staff issued Volume 1 of the safety evaluation
840 review in August 2010.

841 Over the course of the remainder of fiscal year 2010, my
842 staff continued with the licensing review and the preparation
843 of an orderly closure plan in case the Commission overturned
844 the Board's June 2010 decision or the Congress enacted the
845 appropriations requested by the President in the 2011 budget.

846 For fiscal year 2011, the President's budget requested
847 \$10 million for the close-out of the high level waste program
848 and no funds from the Nuclear Waste Fund for the Department
849 of Energy's high-level waste program. On October 1, 2010,
850 while operating under a continuing resolution and consistent
851 with direction from the Chairman, we began a process of

852 transitioning to close-out of the Yucca Mountain program.
853 Specifically, we began the process of documenting and
854 preserving the staff's review, which included converting the
855 remaining volumes of the draft Safety Evaluation Report into
856 a Technical Evaluation Report. The objective of the TER is
857 to capture the knowledge gained during the last 30 years in
858 preparing for and conducting the Yucca Mountain licensing
859 review. It is our belief that by thoroughly documenting the
860 staff's technical review and preserving it as appropriate for
861 publication and public use, the agency will be best
862 positioned to respond to future direction from the
863 Commission, Congress or the courts.

864 I believe this action was consistent with Commission
865 policy, the general principles of appropriations law, and
866 applicable guidance from the Office of Management and Budget
867 and the Government Accountability Office on expenditure of
868 funds under continuing resolutions.

869 In September 2010, my staff began to draft a memo to the
870 Commission that would provide an update on the Yucca Mountain
871 Program. The scope and purpose of the memorandum evolved
872 over a number of weeks as external and agency internal
873 factors, such as budget parameters, individual Commissioner
874 and Commission actions, and inquiries from Congress extended
875 the dialogue regarding the future of the Yucca Mountain

876 program. On February 4, I signed this memorandum that
877 provided the information I felt needed to be conveyed to the
878 Commission to keep the Commission fully and currently
879 informed. That memorandum outlined with some specificity the
880 various actions completed, underway and planned. These
881 included converting the remaining volumes of the Safety
882 Evaluation Report into a Technical Evaluation Report;
883 secondly, archiving the institutional, regulatory and
884 technical information amassed over nearly 3 decades of
885 evaluation of Yucca Mountain; redirecting the Center for
886 Nuclear Waste Regulatory Analysis to focus its Yucca
887 Mountain-related efforts on the preservation of knowledge and
888 records management; continuing to support the Office of
889 General Counsel on any adjudicatory hearing-related matters;
890 videotaping interviews with departing and other senior
891 technical staff for knowledge; initiating discussions with
892 the General Services Administration and other government
893 agencies about preparatory activities to close and
894 decommission the Las Vegas Hearing Facility; and lastly,
895 keeping the Licensing Board informed of the status of the
896 staff's application review activities.

897 Our efforts to thoroughly document and capture the
898 knowledge from our Yucca Mountain activities continue, with a
899 goal of completing these activities by the end of fiscal year

900 2011. No resources have been requested for this activity in
901 fiscal year 2012.

902 As we have been proceeding with the orderly closure of
903 the Yucca Mountain regulatory program, we have also been
904 implementing our strategy for integrated spent fuel
905 management. Given the expected delay in the availability of
906 a repository for high-level waste, the Nation will accumulate
907 an increasing inventory of spent nuclear fuel. Consistent
908 with NRC's mission of ensuring safety and security, the NRC's
909 objective in this strategy is to develop the regulatory
910 tools, analyses and data needed to evaluate and support the
911 safe and secure management of this increasing inventory. We
912 are pursuing this strategy in collaboration with a broad
913 array of external stakeholders.

914 And this completes my prepared remarks. Thank you.

915 [The prepared statement of Ms. Haney follows:]

916 ***** INSERT 5 *****

|
917 Mr. {Shimkus.} Thank you very much. Thank you all for
918 your statements and your testimony. Before we go to
919 questions, I ask unanimous consent that the contents of the
920 document binder be introduced into the record and to
921 authorize staff to make any appropriate redactions. Without
922 objections, the documents will be entered into the record
923 with any redactions the staff determines are appropriate.

924 Mr. {Barton.} Mr. Chairman, may I ask just a
925 parliamentary question?

926 Mr. {Shimkus.} You are risking it but you can.

927 Mr. {Barton.} We have a document before us that says
928 not for public disclosure. Is that just for the members'
929 review or are we allowed to refer to it in the questioning?

930 Mr. {Shimkus.} That submission is part of what is in
931 the document binder, and you can refer to it.

932 Mr. {Barton.} We can refer to it? Thank you, Mr.
933 Chairman.

934 Mr. {Shimkus.} Thank you. Now I would like to
935 recognize myself for the first 5-minute round of questioning.

936 Let me start with you, Dr. Kotra. Just to be clear, the
937 division of high-legal waste repository safety is responsible
938 for providing the technical analysis of the Yucca Mountain
939 license application. Is that correct?

940 Ms. {Kotra.} That is correct, sir.

941 Mr. {Shimkus.} So this is really where the bread and
942 butter work on the license review is done, correct?

943 Ms. {Kotra.} Yes, in coordination with our dedicated
944 contractor at the Center for Nuclear Waste Regulatory
945 Analysis as Mr. Kokajko explained.

946 Mr. {Shimkus.} And why is it important that the staff
947 perform their work objectively and in a non-partisan manner?

948 Ms. {Kotra.} I think it is absolutely vital that the
949 decision makers have at their disposal a decision based upon
950 science, objective, unbiased assessment of the applications
951 put before the Commission for any facility based upon the
952 principles of science, physics and evaluated against the
953 Commission's regulations. That is how this Agency has
954 operated for over 35 years.

955 Mr. {Shimkus.} And you have been there--

956 Ms. {Kotra.} Twenty-seven years.

957 Mr. {Shimkus.} --a big part of that 35 years?

958 Ms. {Kotra.} That is correct.

959 Mr. {Shimkus.} In your testimony, you also spend a
960 considerable amount of time in public outreach about the
961 Agency's work on Yucca review, is that correct? And what is
962 the message about the NRC regulatory process that you have
963 attempted to convey to the public?

964 Ms. {Kotra.} Our independence, our transparency, our
965 willingness to be open to contentions from parties that, yes,
966 we do as thorough and as objective a review as our great body
967 of scientists and staff and contractors will allow, but that
968 is now sufficient that our rules allow for a full and open
969 and non-partisan, impartial hearing process where those
970 parties are free to bring forward criticisms not just of what
971 the applicant provides but also what the staff finds in its
972 independent review. And if those are admitted to the hearing
973 and as you well know, the vast majority of over 318
974 contentions were admitted by the hearing board, and we were
975 prepared to go forward and adjudicate those in our hearing
976 process. So what I told the stakeholders in southern Nevada
977 and in California was if there is merit and those contentions
978 are backed by science and engineering evidence and witnesses,
979 then the board hears those, and on those occasions when the
980 staff is wrong, the Board may find against the staff. And
981 that is okay. That is how the process is supposed to work.

982 Mr. {Shimkus.} Your message really rests on integrity.

983 Ms. {Kotra.} Absolutely.

984 Mr. {Shimkus.} So when it comes to integrity of the
985 process, do you believe that the actions by the NRC
986 leadership over the past year have affected the integrity of
987 the NRC?

988 Ms. {Kotra.} I think it has cast a very serious cloud
989 on that, and it troubles me deeply.

990 Mr. {Shimkus.} Do you believe the actions by leadership
991 at the NRC have undermined what you have tried to convey to
992 the public?

993 Ms. {Kotra.} It is stark contrast to what I have tried
994 to convey to the public, yes, sir.

995 Mr. {Shimkus.} So let me just turn to Dr. Stablein, Dr.
996 Mohseni, Dr. Kokajko. Do you agree with this initial round
997 of questioning on NRC on integrity and that there is now a
998 question of the entire NRC process based upon leadership?
999 Dr. Stablein?

1000 Mr. {Stablein.} I definitely do. This is one of the
1001 things that we are fighting to get back.

1002 In the 27 years I have been with the Agency, we have
1003 been very proud of a couple of things, our independence from
1004 political pressures and our scientific integrity and the
1005 integrity of our process to protect the public health and
1006 safety. I think that has slipped, and we are in danger of
1007 losing that.

1008 Mr. {Shimkus.} Mr. Mohseni?

1009 Mr. {Mohseni.} I do agree.

1010 Mr. {Shimkus.} Mr. Kokajko?

1011 Mr. {Kokajko.} Right. Thank you. I can't speculate on

1012 other parts of the NRC, but I have always felt that if you
1013 could be turned in one area, you can be turned in another.
1014 So I do have some concerns.

1015 Mr. {Shimkus.} The NRC is still a federal agency. A
1016 lot of employees in diverse areas. Is this specific to your
1017 area or is this feeling being spread throughout the entire
1018 NRC?

1019 Ms. {Kotra.} Is that a question--

1020 Mr. {Shimkus.} It is whoever would like to respond.

1021 Ms. {Kotra.} I would just say that my area of expertise
1022 and experience, at least recently, at least since 1993, is
1023 confined to the division of high-level waste repository
1024 safety.

1025 Mr. {Shimkus.} Anyone else like to? My time is
1026 expired, and I would like to recognize the Ranking Member,
1027 Mr. Green, from Texas for 5 minutes.

1028 Mr. {Green.} Thank you, Mr. Chairman. Like I said
1029 earlier, I would like to thank each of you for coming before
1030 us today because I have a concern about the decision that was
1031 made or hasn't been made but the actions that have been taken
1032 based on what is happening at the Yucca Mountain, and that is
1033 why this Subcommittee is looking at it.

1034 And I appreciate you as career employees. I know most
1035 of you have been with the Agency since the late '80s, early

1036 '90s, so you have actually served under four different
1037 Presidents.

1038 Ms. Haney, I know you became Deputy Director in May of
1039 2010. How long have you been with the Agency?

1040 Ms. {Haney.} A little over 20 years. I started in
1041 1981, served 2 years with the Agency, worked as a consultant
1042 for 6 years and then came back in the late '80s, and since
1043 1989 I have been employed with the Agency. So I, too, have
1044 as long a record as my colleagues at the table.

1045 Mr. {Green.} Okay. I guess my concern is that the
1046 American people, we expect you to do your job, and you have
1047 been there for all these years. Has there ever been, that
1048 any of you can remember, something like what has happened at
1049 the Commission that there was a decision made based on a
1050 continuing resolution? I don't have any doubt that it was
1051 legal, but again, Congress made the decision years ago to
1052 decide on Yucca Mountain, and we haven't done as good a job
1053 as, you know, you testified in providing funding. But the
1054 decision was made to not officially withdraw the application
1055 but to do everything you could by shutting it down. Do you
1056 remember any other chair or anything else in your experience
1057 since the late '80s?

1058 Ms. {Kotra.} I can recall of no precedent for this
1059 action, sir.

1060 Mr. {Stablein.} It is unprecedented in my experience.

1061 Mr. {Mohseni.} I do not recall, but it doesn't mean I
1062 am aware of everything that has happened in the Agency. But
1063 for something that has become so apparent, so critical, so
1064 much challenge internally by all of us, including Ms. Haney,
1065 we all challenged that decision when it first arrived. So it
1066 is not like there is precedence for it and we would have
1067 accepted it based on precedence, at least in my memory that
1068 it never came up that there is a basis for such a redirection
1069 under a continuing resolution when you have carry-over funds
1070 that carry you into the next year. And almost every year we
1071 have had continuing resolutions but none that would have done
1072 such a dramatic redirection in a major national program.

1073 Mr. {Kokajko.} No, sir.

1074 Mr. {Green.} Yes, sir?

1075 Mr. {Kokajko.} No, sir, I don't recall anything similar
1076 in the past, and I have worked for very short times in the
1077 Executive Director's Office as well as Commission offices.

1078 Mr. {Green.} Ms. Haney, in your--

1079 Ms. {Haney.} I am not aware of any, either.

1080 Mr. {Green.} Ms. Haney, let me ask you about your memo
1081 of February the 4th. This memo outlines the status of NRC
1082 staff work on the closure of Yucca Mountain licensing review
1083 and appears several times in the witness testimony. When you

1084 first decided to write the memo to the Commission in last
1085 year, what was its purpose?

1086 Ms. {Haney.} When I first worked with staff to develop
1087 the memo, it was probably in the early September timeframe,
1088 and at that point, we did not have any guidance from either
1089 the Executive Director of Operations or from the Commission
1090 level with regards to the future of the program. I was aware
1091 of statements in the budget statements in the document for
1092 the fiscal year 2012 budget. So consistent with what past
1093 practice, I thought it was prudent to prepare a status memo
1094 to the Commission telling them that we--just reinforcing our
1095 March memo to them that we could plan to use carry-over funds
1096 from fiscal year 2010 into 2011 to complete the Safety
1097 Evaluation Report. And by doing that I would take it to the
1098 Commission, give them the opportunity to know what our plans
1099 were. If they had a differing view, they could, through
1100 internal procedures, let staff know of that.

1101 Mr. {Green.} I only have 5 minutes, but last fall with
1102 the developments regarding the direction of high-level waste,
1103 the Chairman told the staff to begin closure of Yucca
1104 Mountain licensing review and stop work on the safety
1105 evaluations. Commissioner Ostendorff asked the Commission to
1106 overturn it, but it failed. Did these events change the
1107 purpose and scope of your memo?

1108 Ms. {Haney.} Yes.

1109 Mr. {Green.} Mr. Mohseni, the suggestion in your
1110 testimony that you quote senior managers directed the staff
1111 to suppress information to the Commission by providing a
1112 status report instead of a policy report on the closure of
1113 Yucca Mountain. Ms. Haney, how did you respond to that? Did
1114 anyone direct you to suppress information to the Commission?

1115 Ms. {Haney.} No.

1116 Mr. {Green.} Dr. Kotra, you expressed in your testimony
1117 the final version of the memo implied that the NRC staff was
1118 who decided to terminate the NRC's review of the license
1119 application. Is that one of the reasons you cite for
1120 submitting the formal non-concurrence with the memo?

1121 Ms. {Kotra.} That is the primary reason that I
1122 submitted a non-concurrence, sir.

1123 Mr. {Green.} Okay. I assumed it was common knowledge
1124 the Chairman made the decision to close down the program?

1125 Ms. {Kotra.} Not initially.

1126 Mr. {Green.} Dr. Kotra, does anyone at NRC or the
1127 Commission really believe that this was the technical staff's
1128 decision?

1129 Ms. {Kotra.} Certainly not now.

1130 Mr. {Green.} Mr. Chairman, I know I am over my time but
1131 one, I appreciate you being here. I am frustrated because we

1132 spent \$15 billion in a decision made by Congress in the
1133 1980s, for good or bad, and we are just throwing that out and
1134 starting over again.

1135 So, Mr. Chairman, thank you for the time.

1136 Mr. {Shimkus.} I thank my colleague. I would like to
1137 turn now to the Chairman Emeritus, Mr. Barton, for 5 minutes.

1138 Mr. {Barton.} I am going to try to do it in 5 minutes.
1139 It is going to be difficult. I first just have some general
1140 housekeeping questions. I assume that you all are all SES
1141 employees?

1142 Ms. {Kotra.} No, sir.

1143 Mr. {Stablein.} I am not.

1144 Mr. {Mohseni.} I am.

1145 Mr. {Barton.} Let us start over again. What are you?
1146 Each of you explain your status, the type of employee you are
1147 at the NRC.

1148 Ms. {Kotra.} I am a senior-level project manager,
1149 technical staff. I am not an SES employee.

1150 Mr. {Barton.} Is anybody here a political appointee?

1151 Ms. {Haney.} No.

1152 Mr. {Stablein.} No.

1153 Mr. {Mohseni.} No.

1154 Mr. {Kokajko.} No.

1155 Ms. {Kotra.} No.

1156 Mr. {Barton.} So you are all hired based on merit and
1157 you can be fired based on merit according to whatever the
1158 protocol is on review, is that correct?

1159 Ms. {Kotra.} That is correct.

1160 Mr. {Barton.} Who is the highest ranking person here?

1161 Ms. {Haney.} I am.

1162 Mr. {Barton.} And you are a--

1163 Ms. {Haney.} I am a Senior Executive Service Office
1164 Director.

1165 Mr. {Barton.} You are an Office Director?

1166 Ms. {Haney.} Correct.

1167 Mr. {Barton.} Who is the next highest?

1168 Mr. {Kokajko.} That would be me.

1169 Mr. {Barton.} And what are you, sir?

1170 Mr. {Kokajko.} I am a Senior Executive Service Member.
1171 I am currently the Acting Director for the Office, Acting
1172 Deputy Director for the Office.

1173 Mr. {Barton.} So you report to Ms. Haney?

1174 Mr. {Kokajko.} Yes, I do.

1175 Mr. {Barton.} Who is next?

1176 Mr. {Mohseni.} I am next. I am an SES member as well,
1177 and I am the Acting Division Director, permanently as a
1178 Deputy Division Director.

1179 Mr. {Barton.} Are you equivalent to Dr. Kokajko?

1180 Mr. {Mohseni.} Dr. Kokajko would be my Division
1181 Director regularly, but he has moved to an Acting Deputy
1182 Director due to the Japanese event. And I have backfield
1183 behind him as the Acting Division Director. I report to him
1184 generally in the division.

1185 Mr. {Barton.} You report to him and he reports to her?

1186 Mr. {Mohseni.} He reports to Cathy.

1187 Mr. {Barton.} What about you, sir?

1188 Mr. {Stablein.} I am a grade 15 Branch Chief. That is
1189 non-SES, and I report directly to Mr. Mohseni.

1190 Mr. {Barton.} So it is just kind of going right up.

1191 And then you are the low lady on the totem pole?

1192 Ms. {Kotra.} I most certainly am. I am a grade 15
1193 Senior Staff. I report to Dr. Stablein, and I have no one
1194 reporting to me.

1195 Mr. {Barton.} Ms. Haney, who do you report to?

1196 Ms. {Haney.} I report to the Deputy Director of
1197 Operations, Michael Weber.

1198 Mr. {Barton.} And who does he report to?

1199 Ms. {Haney.} To the Executive Director of Operations
1200 which is Bill Borchardt.

1201 Mr. {Barton.} And who does he report to?

1202 Ms. {Haney.} At that point, you move onto the
1203 Commission level and he reports to them.

1204 Mr. {Barton.} So you are two levels below the
1205 Commission?

1206 Ms. {Haney.} Yes.

1207 Mr. {Barton.} So you would normally, even at your
1208 level, you have no day-to-day interaction with the Commission
1209 staff?

1210 Ms. {Haney.} On a day-to-day--

1211 Mr. {Barton.} With a Commissioner?

1212 Ms. {Haney.} With a Commissioner? Typically on a
1213 frequency of once to every other month I meet on a one-on-one
1214 basis with a Commissioner or with the Chairman.

1215 Mr. {Barton.} Does everybody here consider yourself to
1216 be outside politics? I mean, you are professionals.
1217 Whatever the job is, you do it, and you let the
1218 presidentially appointed Commissioners and their political
1219 appointees handle the politics. Is that a fair statement?

1220 Ms. {Haney.} Yes?

1221 Mr. {Barton.} Everybody agrees?

1222 Ms. {Kotra.} Yes.

1223 Mr. {Barton.} Mr. Mohseni, we have a document that is
1224 listed not for public disclosure that was sent from you to
1225 Ms. Haney. It is apparently now going to be in the public
1226 record. Is that with or without your permission?

1227 Mr. {Mohseni.} I did not release it myself.

1228 Mr. {Barton.} So it is without your permission?

1229 Mr. {Mohseni.} Yes.

1230 Mr. {Barton.} And it is sent to you, Ms. Haney, so I
1231 assume it has been released without your permission?

1232 Ms. {Haney.} Correct.

1233 Mr. {Barton.} Okay. Mr. Mohseni, this is a pretty, to
1234 me, an unusual document.

1235 Mr. {Shimkus.} If the gentleman will yield for a
1236 second? It is Tab 6 in the document binder that we submitted
1237 into the record.

1238 Mr. {Barton.} You disagree with the decision not to
1239 approve the Technical Evaluation Report as written for
1240 publication. I also disagree with the need to revise the TER
1241 which is Technical Evaluation Report. Did you feel when you
1242 wrote this that this might have some negative consequences on
1243 you?

1244 Mr. {Mohseni.} Me?

1245 Mr. {Barton.} Yes, sir.

1246 Mr. {Mohseni.} Yes, I did.

1247 Mr. {Barton.} Okay. And when you received it, Ms.
1248 Haney, did you feel like that you needed to respond fairly
1249 emphatically or that you would be put under some pressure
1250 from higher-ups?

1251 Ms. {Haney.} No.

1252 Mr. {Barton.} You felt no pressure?

1253 Ms. {Haney.} The pressure is coming from I have a
1254 desire to have the Technical Evaluation Report released to
1255 the public. So the pressure comes from an internal desire to
1256 make that document publically available, and as written, I
1257 was not comfortable with it being released to the public. So
1258 the pressure comes with regards to the document, not with
1259 regards to any of the content of the memo.

1260 Mr. {Barton.} My 5 minutes is already expired. Let me
1261 ask one final question. Do you all feel like the Chairman at
1262 NRC is acting appropriately within the statute with what he
1263 has done to try to shut Yucca Mountain down? That is a
1264 straight question.

1265 Mr. {Mohseni.} I do not agree with his decision of
1266 bypassing the rest of the Commission and making this decision
1267 as a policy decision where the entire Commission would have
1268 actually vetted this decision, this important decision. The
1269 reasons I have that the law has not changed--

1270 Mr. {Barton.} We don't have time for your reasons.

1271 Mr. {Mohseni.} Okay. Well, I disagree with the
1272 Chairman's decision to move--

1273 Mr. {Barton.} Ms. Haney, do you--

1274 Ms. {Haney.} I believe he is within his legal authority
1275 to make the decisions he has made.

1276 Mr. {Barton.} Without the other Commissioners'
1277 approval? You think the Chairman himself has that authority?

1278 Ms. {Haney.} Based on the knowledge and the reasons
1279 that he has provided for making that decision, yes.

1280 Mr. {Barton.} What about you, Mr. Kokajko?

1281 Mr. {Kokajko.} No, sir. I disagree with the Chairman
1282 on this. I would have preferred that the NRC implement its
1283 internal processes which are available to make this decision.
1284 I think it is of profound national significance, and it
1285 should have been done much more openly and--

1286 Mr. {Barton.} Dr. Stablein, what is your position?

1287 Mr. {Stablein.} I also believe that the entire
1288 Commission should have had the opportunity to weigh in on
1289 such a major decision, and in fact, the IG report indicates
1290 had they weighed in, the decision would have come out
1291 differently.

1292 Mr. {Barton.} Okay, and Dr. Kotra?

1293 Ms. {Kotra.} Earlier in my career, I served on the
1294 staff of two Commissioners and did a rotation for a third,
1295 and in all my experience working for political appointees in
1296 the NRC, I have never seen a policy decision of this
1297 magnitude handled in this manner. I disagree with this
1298 decision treated unilaterally by a Chairman. It should have
1299 been a Commission decision.

1300 Mr. {Barton.} Thank you, Mr. Chairman, and thank you
1301 for the courtesy of letting me go over 2 minutes.

1302 Mr. {Shimkus.} The Chair now recognizes the Chairman
1303 Emeritus, Mr. Waxman, for 5 minutes.

1304 Mr. {Waxman.} Thank you very much, Mr. Chairman. I
1305 would like to discuss some of the allegations raised in the
1306 witness testimony against Chairman Jaczko and senior managers
1307 at the NRC.

1308 Mr. Mohseni alleges in his statement that, ``senior
1309 managers contributed to the manipulation of the budget
1310 process to apparently make sure that the Yucca Mountain
1311 project would be left unfunded.'' Mr. Stablein called
1312 Chairman Jaczko's decision to terminate the licensing review
1313 process, ``the arbitrary decision of one individual.'' These
1314 statements appear to leave out important players in this
1315 ongoing saga.

1316 In February of last year, the Obama Administration
1317 announced that it planned to shut down the Yucca Mountain
1318 project. Not long after that, Secretary of Energy asked to
1319 withdraw the Yucca Mountain license application from NRC
1320 review. Ms. Haney, is that correct?

1321 Ms. {Haney.} Yes.

1322 Mr. {Waxman.} In 2010, the NRC approved its budget
1323 justification for fiscal year 2011 stating that it would use

1324 its funding to begin an orderly closure of the Yucca Mountain
1325 licensing activities. For fiscal year 2012, NRC requested \$4
1326 million to terminate the licensing review. The Commission
1327 approved that budget request as well. Ms. Haney, is that
1328 your understanding?

1329 Ms. {Haney.} Yes.

1330 Mr. {Waxman.} In addition, after the Chairman told the
1331 staff to close out the Yucca Mountain licensing review last
1332 fall, Commissioner Ostendorff called a vote to direct staff
1333 to proceed with the license review and finish the Safety
1334 Evaluation Reports. That vote failed when a majority of
1335 Commissioners opted not to participate. Ms. Haney, is that
1336 your understanding?

1337 Ms. {Haney.} Yes.

1338 Mr. {Waxman.} And Congress has weighed in as well. In
1339 April, Congress passed a continuing resolution that zeroed
1340 out funding for Yucca Mountain at DOE and allocated \$10
1341 million to NRC to close out the license review. I would note
1342 that both Chairman Shimkus and Chairman Upton voted for the
1343 CR and did not offer or even file an amendment to restore
1344 funding for Yucca Mountain. Despite the record, Mr. Mohseni
1345 alleges in his testimony that there is a conspiracy among
1346 senior management at NRC to do the political bidding of
1347 Chairman Jaczko. So I will ask the question. Ms. Haney, has

1348 the Chairman or his staff ever directed you or asked you to
1349 direct staff to change or suppress technical findings on
1350 Yucca Mountain?

1351 Ms. {Haney.} The Chairman has never asked that.

1352 Mr. {Waxman.} Thank you. I can understand why many of
1353 you are frustrated and upset by the end of this program after
1354 4 years of hard work. While some may disagree with Chairman
1355 Jaczko's decision to close down Yucca Mountain licensing
1356 review, it was hardly an arbitrary decision. The Commission
1357 and Congress voted on several occasions to move forwards with
1358 the closure, it wasn't the Chairman alone. It was the
1359 Secretary of Energy and the President of the United States
1360 and the Congress of the United States that decided to end the
1361 Yucca Mountain project, and that is where we stand at the
1362 moment.

1363 Mr. {Shimkus.} Will the gentleman yield just for one
1364 second, just to follow up on a question?

1365 Mr. {Waxman.} Yes.

1366 Mr. {Shimkus.} The question you asked Ms. Haney, and
1367 she is under oath, the question that you asked, did the
1368 Chairman or staff. Her response was, the Chairman did not.
1369 Can she answer the question whether staff had ever given her
1370 direction? I mean, that is what your question was, to
1371 Chairman and staff. Ms. Haney, your response was, and you

1372 are under oath, your response was the Chairman has not.

1373 Ms. {Haney.} Nor has the staff.

1374 Mr. {Shimkus.} Okay. Thank you.

1375 Ms. {Haney.} But if given the opportunity with regards
1376 to--I am interpreting suppress to be to change technical
1377 findings, we did receive direction from the Chairman with
1378 regards to when we would issue technical documents as noted
1379 in Dr. Stablein's testimony. But am I answering that the
1380 Chairman or the staff did not give me. That is my
1381 interpretation of suppression, that he did not suppress
1382 technical information.

1383 Mr. {Waxman.} But he did ask you or his staff asked you
1384 to do what?

1385 Ms. {Haney.} With regards to the timing of the Safety
1386 Evaluation Report being issued at the times we had told the
1387 Board that we would issue them, and my reference is back to
1388 Dr. Stablein's testimony.

1389 Mr. {Waxman.} And is that something unusual for the
1390 Chairman to talk about the timing and direct the timing of
1391 release of certain--

1392 Ms. {Haney.} It is unusual, but again, I believe it is
1393 consistent with the authorities that he has as Chairman.

1394 Mr. {Waxman.} Thank you very much. I yield back my
1395 time, Mr. Chairman.

1396 Mr. {Shimkus.} Thank you, Mr. Waxman, for letting me
1397 intervene. The Chair now recognizes the Vice Chair, Mr.
1398 Murphy, for 5 minutes.

1399 Mr. {Murphy.} Mr. Mohseni, I read the Inspector
1400 General's report, and it seems that some NRC executives
1401 anticipated that during the continuing resolution in the fall
1402 of 2010 your department would continue its work on Yucca and
1403 the Safety Evaluation Report. Allow me to read it for you.
1404 ``The Deputy Executive Director wanted to convey in the CR
1405 budget guidance memorandum that the staff would use FY 2010
1406 carryover funds in fiscal year 2011 to move ahead with
1407 license application review activities until they had a final
1408 decision from the Commission. This was a language the Deputy
1409 Executive Director originally inserted into early draft
1410 versions of the CR budget guidance memorandum.'' Meaning
1411 there was money left over. I repeat, there was money left
1412 over to continue with the Safety Evaluation Report and review
1413 of the Department of Energy application while the
1414 Commissioners deliberated on whether to uphold or vacate the
1415 Atomic Safety and Licensing Board decision. This language
1416 was ultimately removed. Is that correct?

1417 Mr. {Mohseni.} That is correct.

1418 Mr. {Murphy.} Is it your opinion that Chairman Jaczko
1419 directed the removal of this language?

1420 Mr. {Mohseni.} I don't know personally for sure, but
1421 circumstantial evidence suggests that.

1422 Mr. {Murphy.} Is it your opinion that by removing that
1423 language, the Chairman was undermining the Agency's
1424 independent work at Yucca?

1425 Mr. {Mohseni.} There is a connection there to be made.

1426 Mr. {Murphy.} Mr. Mohseni, the Director, Catherine
1427 Haney here, has testified that on October 1, 2010, while the
1428 NRC, like all government agencies, was operating under a
1429 continuing resolution, the Department began to convert the
1430 remaining volumes of the Safety Evaluation Report into a
1431 technical advisory document devoid of scientific findings.
1432 Is there a difference between a safety evaluation report and
1433 technical evaluation report in terms of what they mean for
1434 policymakers? Is there a difference in content?

1435 Mr. {Mohseni.} There is.

1436 Mr. {Murphy.} All right. Is it true that a technical
1437 evaluation report would lack scientific findings and
1438 conclusions reached by the Department in your work?

1439 Mr. {Mohseni.} The Safety Evaluation Report would have
1440 regulatory compliance findings. It would also have a
1441 technical assessment. The technical evaluation report would
1442 just have the technical assessment without the regulatory
1443 compliance.

1444 Mr. {Murphy.} So if you were directed to do one and not
1445 the other, there would be a distinct difference in content
1446 between the two documents, am I correct?

1447 Mr. {Mohseni.} Yes.

1448 Mr. {Murphy.} And it is possible that the safety
1449 evaluation report could contain information that would
1450 validate Yucca and dispel safety concerns, am I correct?

1451 Mr. {Mohseni.} Correct.

1452 Mr. {Murphy.} So if you were told not to do a safety
1453 evaluation report but to do a technical evaluation report,
1454 there would be direct suppression of data, am I correct?

1455 Mr. {Mohseni.} Yes, from a licensing standpoint, the
1456 ultimate decision for the Nation was whether or not it meets
1457 the regulation. So that piece of information would not be
1458 available.

1459 Mr. {Murphy.} So is it your opinion that the Chairman
1460 of the NRC specifically directed the staff in your department
1461 to delay publication of a Safety Evaluation Report until
1462 after he published a budget memorandum that would end your
1463 department's work? Am I correct in that?

1464 Mr. {Mohseni.} Let me just rephrase that, if you don't
1465 mind.

1466 Mr. {Murphy.} Real quick. I have a whole bunch of
1467 questions.

1468 Mr. {Mohseni.} Yes, the Safety Evaluation Report is
1469 tied to our litigation process, and the timing of release of
1470 that would have been consistent with what we had announced to
1471 the board. And the intervention by the Chairman put us off
1472 course.

1473 Mr. {Murphy.} Mr. Mohseni, you recently appealed to the
1474 full Commission to intervene in connection with your concerns
1475 about manipulation and suppression of staff information.
1476 This is what we have in Tab 7 there, what appears to be a
1477 copy of that petition. That is what you filed?

1478 Mr. {Mohseni.} Yes, sir.

1479 Mr. {Murphy.} What led you to do this, real quick?

1480 Mr. {Mohseni.} The Technical Evaluation Report was
1481 complete March 31 as we had announced, and I was the final
1482 signatory on it. And we provided it to the front office, and
1483 2 months later we got the direction that I think you heard
1484 the witnesses here that we were not authorized to release it
1485 unless it was revised.

1486 Mr. {Murphy.} You wrote in this document, ``In this
1487 division alone I have witnessed the suppression and
1488 manipulation of programmatic and budgetary information to
1489 meet a politicized agenda.'' Is it your belief that this
1490 direction came from Mr. Jaczko?

1491 Mr. {Mohseni.} Although I don't have direct evidence,

1492 but it seems like it is the same agenda.

1493 Mr. {Murphy.} All right. In your testimony you
1494 referenced the political pressures, manipulation of our
1495 scientific and licensing process that would come with the
1496 appointment of Chairman Jaczko. Do you believe the source of
1497 problems of the Agency today stemmed from Chairman Jaczko's
1498 behavior and actions?

1499 Mr. {Mohseni.} The source might be there, but he
1500 couldn't do it alone if there were not enablers.

1501 Mr. {Murphy.} I am a psychologist. I am familiar with
1502 enabling. I would like to read to you a couple statement
1503 from his speech and see if you are in agreement with this.
1504 This is regarding the mission statement of NRC. The NRC must
1505 foster initiatives that seek to further the culture within
1506 our own staff by encouraging programs such as differing
1507 professional opinions. Would you agree with that?

1508 Mr. {Mohseni.} Yes, sir.

1509 Mr. {Murphy.} Do you think that culture exists in this
1510 situation?

1511 Mr. {Mohseni.} I have tested it, and so far I am still
1512 sitting here before you, so--

1513 Mr. {Murphy.} All right. But the culture of being
1514 allowed to have these professional opinions coming to an
1515 official NRC report seems to be tainted. How about this one?

1516 Mr. {Mohseni.} Yes.

1517 Mr. {Murphy.} How about this one, too, the process of
1518 the Commission uses to make policy decisions should always be
1519 open, accessible and well-understood by all. But the law as
1520 Congress has passed, the President signed into law, it says
1521 the Chairman and the Executive Director of Operations to the
1522 Chairman, shall be responsible for ensuring the Commission is
1523 fully and currently informed about matters within its
1524 functions. Yet, it appears by directing the report to be
1525 done in one way and not the other, it seemed to be in
1526 violation of that law. Would you agree?

1527 Mr. {Mohseni.} Yes, I agree.

1528 Mr. {Murphy.} One more statement, Mr. Chairman. Would
1529 it surprise you those quotes I read you were made by Mr.
1530 Jaczko himself in 2005?

1531 Mr. {Mohseni.} Yeah.

1532 Mr. {Murphy.} I would like to submit this for the
1533 record, Mr. Chairman.

1534 Mr. {Shimkus.} Is there objection? Hearing none, so
1535 ordered.

1536 [The information follows:]

1537 ***** COMMITTEE INSERT *****

|
1538 Mr. {Shimkus.} The Chair now recognizes the gentleman
1539 from Pennsylvania, Mr. Pitts, for 5 minutes.

1540 Mr. {Pitts.} Thank you, Mr. Chairman. Mr. Mohseni, to
1541 continue, you state your belief that ``At the direction of
1542 the Chairman and with the aid of some senior managers, the
1543 disclosure to the rest of the Commission of the staff's views
1544 on the impacts of budget cuts and allocations was
1545 suppressed.'' What were these views briefly?

1546 Mr. {Mohseni.} We had prepared responses to inquiries
1547 by individual Commissioners and by inquiries from Members of
1548 Congress. And we the staff were the first people to actually
1549 try to address those questions. As they were sent up through
1550 the chain, it had to be cleared at the Chairman's office, and
1551 then the answers that went out were quite different than the
1552 ones we had forwarded.

1553 Mr. {Pitts.} Mr. Mohseni, why would the Chairman and
1554 certain senior managers seek to silence the staff's views on
1555 the impacts of budget cuts and allocations?

1556 Mr. {Mohseni.} In retrospect, after the IG report, I
1557 can actually say that it is very clear that, in fact, to keep
1558 the others in the dark so that the decision would not be
1559 hampered to shut down the program.

1560 Mr. {Pitts.} Isn't it true that keeping the full

1561 Commission fully and currently informed is a statutory
1562 requirement?

1563 Mr. {Mohseni.} It is indeed.

1564 Mr. {Pitts.} Why is it important that the full
1565 Commission have an opportunity to hear the views of its
1566 dedicated and most experienced professional staff?

1567 Mr. {Mohseni.} Because the Commission's policy-making
1568 body heavily relies on the best information available to them
1569 to make policy. Once the staff deprives the full Commission
1570 of getting the full benefit of the thinking of the staff in
1571 terms of the options that the Commission has and the
1572 recommendation from the staff, it undermines the
1573 functionality of the Commission, and you will at best come up
1574 with an inadequate policy because you did not support with
1575 full information the integrity of the process by providing
1576 them with the best advice possible.

1577 Mr. {Pitts.} Dr. Kotra and Dr. Stablein, Mr. Mohseni,
1578 if you will each respond, to what extent does NRC senior
1579 leadership contribute to problems of keeping information
1580 fully and currently from the Commission? And if you can
1581 provide a specific example of this happening to you with
1582 regard to providing information to the Commission about Yucca
1583 Mountain?

1584 Ms. {Kotra.} Well, to the extent that I am given

1585 assignments to draft information that is going to go forward
1586 to the Commission, I have to satisfy the concurrence chain
1587 that goes up through my management. And ordinarily, there is
1588 a chain that starts at the bottom and goes to the top. The
1589 regular procedure that I had to follow in the memo that we
1590 have discussed here today was coming directly from the Deputy
1591 Director of Operations reaching down to my level and making
1592 changes in the draft that would be seen by multiple layers
1593 above me is now how it is supposed to work. Basically, the
1594 draft that was supposed to go through the concurrence chain
1595 in an orderly progression was not allowed to happen. There
1596 were over 100 different electronic drafts that were entered
1597 into our electronic recordkeeping system before this memo
1598 went forward to the Commission, and much of that was to
1599 incorporate changes that were provided, I am told, you know,
1600 through this iterative process, and I don't know this
1601 directly, but it was through meetings that my office director
1602 had with the Deputy Director for Operations, and I could only
1603 surmise that this direction was coming from the Chairman's
1604 office.

1605 Mr. {Pitts.} The Chair Emeritus wants to--

1606 Mr. {Barton.} The Deputy Director of Operations reports
1607 to the Director of Operations who I assume reports to the
1608 Chairman?

1609 Ms. {Kotra.} That is correct.

1610 Mr. {Barton.} Or to the Commission?

1611 Ms. {Kotra.} That is correct.

1612 Mr. {Barton.} At those two levels, are those political
1613 appointees or are they civil service?

1614 Ms. {Kotra.} They are career civil servants, but they
1615 report directly to the Chairman.

1616 Mr. {Barton.} Okay. Thank you.

1617 Mr. {Pitts.} Dr. Stablein, would you respond?

1618 Mr. {Stablein.} The best example that I have is also
1619 this memo that Dr. Kotra worked on because as her supervisor,
1620 I agonized with her over these changes we were forced to
1621 make.

1622 Mr. {Pitts.} Thank you. Mr. Mohseni, would you
1623 respond?

1624 Mr. {Mohseni.} Same.

1625 Mr. {Pitts.} All right. Ms. Haney, you supervise the
1626 other panelists appearing here today, right?

1627 Ms. {Haney.} Yes.

1628 Mr. {Pitts.} How do you respond to the concerns
1629 expressed by these senior NRC staff that the Commission is
1630 not getting full information?

1631 Ms. {Haney.} To the best of my knowledge, I believe the
1632 Commission was getting the information. Now after the IG

1633 report is out, there are things that would call that into
1634 question. But at the time we were working on that memo and I
1635 was the one that was directing the content of the memo with
1636 input from the Deputy Director of Operations, I felt the
1637 Commission was aware based on my periodic meetings with the
1638 Commissioners.

1639 Mr. {Pitts.} Well, knowing what you know as Director
1640 and knowing what the Commission does not know, do you think
1641 all policy and budget matters concerning the Yucca license
1642 activity have adequately been communicated to the Commission?

1643 Ms. {Haney.} I do believe that.

1644 Mr. {Pitts.} What is the reaction of the other three of
1645 you?

1646 Ms. {Kotra.} I find that hard to believe.

1647 Mr. {Mohseni.} I specifically asked that question
1648 yesterday of at least one Commissioner, and I previously
1649 asked the others. The answer was no, we have not.

1650 Mr. {Pitts.} Dr. Stablein?

1651 Mr. {Stablein.} Yes, I agree with what Mr. Mohseni
1652 said.

1653 Mr. {Pitts.} My time is up.

1654 Mr. {Shimkus.} The gentleman's time is expired. The
1655 Chair now recognizes the gentleman from Ohio, Mr. Latta, for
1656 5 minutes.

1657 Mr. {Latta.} Well, thank you, Chairman. I appreciate
1658 the time and I appreciate the panelists here today, and every
1659 one of these hearings I set through, I can't say that I am
1660 not even more amazed of what is going on out there.

1661 As the Chairman has stated about a dysfunctional
1662 Commission and hearing what the Inspector General is saying
1663 and saying that the Chairman is not forthcoming in the
1664 information to his fellow Commissioners is just beyond
1665 belief.

1666 But if I could, Mr. Mohseni, if I could ask you this,
1667 what is the technical evaluation report for post-closure
1668 safety?

1669 Mr. {Mohseni.} It is the staff's collection of learning
1670 that has contributed to our original Safety Evaluation Report
1671 minus the regulatory compliance findings. So it has, I don't
1672 know, 400 or 500 pages of serious technical assessment of the
1673 performance of the mountain once it is closed. It is the
1674 post-closure, 1 million year assessment of its performance as
1675 proposed by the Department of Energy.

1676 Mr. {Latta.} Okay. And according to the February 4
1677 memo to the Commission, was the document to be released on
1678 March the 31st? Was the document to be released by March 31?

1679 Mr. {Mohseni.} It had to be completed by March 31 and
1680 probably within days to be released, yes.

1681 Mr. {Latta.} Okay, and was the TER manage group
1682 completed by March 31?

1683 Mr. {Mohseni.} The staff completed it, yes.

1684 Mr. {Latta.} Okay. And also, in one of your memos that
1685 you had sent on June the 3rd, you stated that this was not a
1686 draft, it was final and it was completed on or around the
1687 31st. Do you still stand by that, that it was--

1688 Mr. {Mohseni.} Yes, sir. Yes, sir.

1689 Mr. {Latta.} And also, are you the signing official on
1690 that document, then?

1691 Mr. {Mohseni.} Yes, as Acting Division Director, I
1692 signed. I am the final signatory on that document.

1693 Mr. {Latta.} Let me ask you this. Director Haney had
1694 mentioned that she believed that the Commission was getting
1695 the information, but in looking at some of these documents
1696 that we have received, one dated on June the 20th that you
1697 had sent to all the Commissioners, a request for Commission
1698 intervention, why did you send that?

1699 Mr. {Mohseni.} This was the final straw for me. I had
1700 observed the testimony of the individual Commissioners in
1701 response to the IG report, and then this event about the TER
1702 occurred. And I could not give the benefit of the doubt
1703 anymore to the senior management above me to actually perform
1704 what we were supposed to be performing. And I thought this

1705 still smelled like even after the IG report is out, we still
1706 have not learned the lesson of actually maintaining a level
1707 of integrity in the process.

1708 Mr. {Latta.} Okay.

1709 Mr. {Mohseni.} I thought the process is--

1710 Mr. {Latta.} I am not sure about the date on this one.

1711 I have two memos here. You have one addressed to the
1712 Commission, to each Commissioner by name. But in the second
1713 paragraph it says--is this the enclosure then? Within it it
1714 says on June the 6th I was informed that additional
1715 redactions be needed to release the TER. I respectfully
1716 disagreed with the decision not to release the TER as written
1717 and approved for the publication and public distribution. I
1718 also disagreed with the need to revise the TER. Attached is
1719 my email fully explaining my basis for challenging this
1720 policy decision.

1721 Did you get any response back from anybody on the
1722 Commission?

1723 Mr. {Mohseni.} Not from the Commission, but I think Ms.
1724 Haney can address that. We have had--the EDO responds at
1725 least, you know, on short notice on a list of actions that
1726 the EDO is taking on that memo. We are still awaiting
1727 Commission decision on it.

1728 Mr. {Latta.} Okay. Let me go on with the February the

1729 4th memo with the TER. According to that memo, the TER was
1730 going to contain no staff findings of a regulatory
1731 compliance, is that correct?

1732 Mr. {Mohseni.} That is correct.

1733 Mr. {Latta.} Okay. Are there staff findings about the
1734 regulatory compliance in that document?

1735 Mr. {Mohseni.} No.

1736 Mr. {Latta.} And did the Office of the General Counsel
1737 object to the TER or express any concerns about the document
1738 as it was written?

1739 Mr. {Mohseni.} No, they did not.

1740 Mr. {Latta.} But even without regulatory findings, this
1741 is an important scientific document reflecting the judgment
1742 and analysis of the NRC technical and scientific staff. Is
1743 that correct?

1744 Mr. {Mohseni.} That is correct.

1745 Mr. {Latta.} And I would also assume that any efforts
1746 to edit the scientific analysis would be frowned upon by the
1747 diligent staff. Would I be wrong in that assumption?

1748 Mr. {Mohseni.} No.

1749 Mr. {Latta.} Dr. Haney, if I could just ask you, the
1750 February the 4th report does not contain any regulatory
1751 findings. Why did you not allow the division staff to
1752 release the TER?

1753 Ms. {Haney.} Because when I looked at the Technical
1754 Evaluation Report and compared it to the Safety Evaluation
1755 Report, I felt that there were similarities between the two
1756 documents and that it actually did contain the findings. So
1757 I asked for some minor changes, and I would emphasize they
1758 were minor changes to further separate the documents.

1759 Mr. {Latta.} Okay. Isn't it true that the TER
1760 specifically states that it does not include conclusions as
1761 to whether or not the DOE satisfies the Commission's
1762 regulations in the TER?

1763 Ms. {Haney.} That was the intent of the document, but I
1764 felt there were statements in there that were too similar to
1765 the Safety Evaluation Report, and you could make a conclusion
1766 based on staff's technical findings.

1767 Mr. {Latta.} Okay. Are there specific conclusions
1768 about whether the DOE license application for Yucca Mountain
1769 complies with the NRC safety regulations in the document?

1770 Ms. {Haney.} There is not a direct tie in the Technical
1771 Evaluation Report to the regulations. However, there is a
1772 tie to the Yucca Mountain Review Plan that is a Commission-
1773 approved document.

1774 Mr. {Latta.} Let me ask this. I just want to make sure
1775 I heard it correctly. When you were sending information up
1776 the chain, as you might say, did you believe this Commission

1777 was getting all the information, all the Commission members?

1778 Ms. {Haney.} At the time, prior to the IG's report
1779 coming out, my answer would have been yes. But based on the
1780 IG report now, I would have to change that opinion.

1781 Mr. {Latta.} So you would change it to--what would your
1782 opinion be then?

1783 Ms. {Haney.} It appears that they were not getting some
1784 of the information that I thought that they had been getting.

1785 Mr. {Latta.} Thank you very much, Mr. Chairman. I
1786 yield back.

1787 Mr. {Shimkus.} The gentleman yields back. The Chair
1788 recognizes the gentleman from Colorado for 5 minutes.

1789 Mr. {Gardner.} I thank you, Mr. Chairman, for the
1790 hearing today and thank you to the witnesses as well for your
1791 time in discussion today.

1792 Dr. Stablein, what is the significance of SER Volume 3
1793 in your opinion?

1794 Mr. {Stablein.} The significance of the Safety
1795 Evaluation Report, Volume 3, is it provides the staff's
1796 regulatory findings versus the part 63 requirements for
1797 performance of the repository in the million years after it
1798 is closed up.

1799 Mr. {Gardner.} And what is the status of the document
1800 when Chairman Jaczko directed you to terminate review?

1801 Mr. {Stablein.} It was very near being ready to be
1802 issued.

1803 Mr. {Gardner.} Very near? Would it have taken much
1804 effort to finish it?

1805 Mr. {Stablein.} No. In terms of resources, really very
1806 little resource to finish.

1807 Mr. {Gardner.} So finish relatively easy then?

1808 Mr. {Stablein.} Yes.

1809 Mr. {Gardner.} Okay. Mr. Mohseni, according to your
1810 email exchange with Ms. Haney, which I believe is in Tab 6,
1811 page 2, Item 8 of what you have in front of you, you say the
1812 SER Volume 3 is complete in content with the Office of
1813 General Counsel's no legal objection and no open issues. Is
1814 that correct?

1815 Mr. {Mohseni.} Yes.

1816 Mr. {Gardner.} When was the SER 3 completed with the
1817 Office of General Counsel offering no legal objection to the
1818 full content?

1819 Mr. {Mohseni.} Perhaps the latter part of the year
1820 2010.

1821 Mr. {Gardner.} So it was completed with the Office of
1822 General Counsel you believe the latter part of the year 2010?

1823 Mr. {Mohseni.} Yes, latter part of 2010, and we
1824 developed a reversible package, not the SER. To get to a

1825 TER, we had to start from the SER, and the work that went
1826 into it, my colleagues later called it a hybrid thing, to go
1827 from one document to another. So the terminology, we were
1828 not working on an SER anymore, we were working on a TER. But
1829 by going through the initial phase, I think we completed the
1830 OGC concurrence in that phase.

1831 Mr. {Gardner.} Okay. And so the document is
1832 essentially, save for formatting and copy edits, is that
1833 correct?

1834 Mr. {Mohseni.} Yes, and of course, the Office Director
1835 comments prior to publication, obviously. The signature has
1836 to come from the Office Director.

1837 Mr. {Gardner.} Until your email, was the Commission
1838 made fully and currently aware that the staff had
1839 substantially completed SER Volume 3?

1840 Mr. {Mohseni.} Yes.

1841 Mr. {Gardner.} Yes? Okay. And so as far as technical
1842 staff is concerned, the SER will not fundamentally change and
1843 could be released to the public as of the timeframe you
1844 mentioned, correct, to this year?

1845 Mr. {Mohseni.} Yes.

1846 Mr. {Gardner.} So that is correct. Then what is the
1847 basis for saying then that its release is pre-decisional?

1848 Mr. {Mohseni.} It is pre-decisional because of the

1849 hearing process, pre-decisional because if--first of all, the
1850 Office Director has not signed off on it, so therefore, the
1851 document is incomplete if you will because that final
1852 signature is not on it.

1853 Mr. {Gardner.} So is--

1854 Mr. {Mohseni.} But it is pre-decisional because of the
1855 legal aspects of it, prior to--you know, when we are ready to
1856 issue it to the Board, it becomes public.

1857 Mr. {Gardner.} So who makes that determination then?

1858 Mr. {Mohseni.} That final determination is by our
1859 office director.

1860 Mr. {Gardner.} Okay. All right.

1861 Mr. {Mohseni.} The staff has done its work, but the
1862 Office Director's signature is necessary. Obviously it is a
1863 licensing document, and the NMSS Office Director is in charge
1864 of making that final call.

1865 Mr. {Gardner.} And so, Ms. Haney, then on what basis
1866 are you making this decision that the SER is a draft? We
1867 just heard it is complete.

1868 Ms. {Haney.} I have not completed my review. A copy
1869 with the OGC changes in it has not been presented to me, and
1870 I have the direction from the Chairman that the document is
1871 not to be issued until our original schedule, which was
1872 November.

1873 Mr. {Gardner.} So is the Chairman making the decision
1874 or are you making the decision?

1875 Ms. {Haney.} There are a couple things going on. One
1876 is the Chairman's June memo that said the Safety Evaluation
1877 Report should be issued on the schedule that we had provided
1878 to the Board which was that Volume 3 would have been
1879 presented for publication in November of 2010.

1880 Mr. {Gardner.} How many of the Commissioners know there
1881 is a reversible SER on the shelf right now then?

1882 Ms. {Haney.} I think the use of the term reversible SER
1883 is rather confusing. On October 1 we began to work on a
1884 Technical Evaluation Report. So the Safety Evaluation Report
1885 stopped on September 30 of last year. All the Commissioners
1886 I believe are aware that staff is working on a Technical
1887 Evaluation Report that was being developed using the Safety
1888 Evaluation Report as a basis document.

1889 Mr. {Gardner.} But in terms of the SER, do you believe
1890 you have an obligation to keep the Commission fully and
1891 currently informed?

1892 Ms. {Haney.} Yes.

1893 Mr. {Gardner.} And have you done that?

1894 Ms. {Haney.} I believe I have.

1895 Mr. {Gardner.} But the Counsel report said that they
1896 didn't know certain things.

1897 Ms. {Haney.} I know I had numerous conversations, one-
1898 on-one conversations with all the Commissioners as well as
1899 the Chairman with regards to the status of the Safety
1900 Evaluation Report and the Technical Evaluation Report. I am
1901 aware of what the IG report says also.

1902 Mr. {Gardner.} And so--I mean, does the Commission
1903 provide any guidance to staff on how to handle near-complete
1904 SERs?

1905 Ms. {Haney.} No.

1906 Mr. {Gardner.} Prior to the IG's report you say you
1907 thought information was getting through. Now it appears that
1908 it wasn't. What information wasn't getting through?

1909 Ms. {Haney.} It appears some of the budgeting
1910 information.

1911 Mr. {Gardner.} It appears though it didn't get through?

1912 Ms. {Haney.} Correct.

1913 Mr. {Gardner.} And is that something that you should
1914 have had a conversation with them about?

1915 Ms. {Haney.} Certain elements of the budget I would
1916 have conversations with them, but that is not a primary
1917 responsibility of my job.

1918 Mr. {Shimkus.} The gentleman--

1919 Ms. {Haney.} That would be more of Chief Financial
1920 Officer.

1921 Mr. {Shimkus.} The gentleman's time is expired. The
1922 Chair recognizes the gentleman from Oklahoma, but before he
1923 assumes his time, I just want to clear something up that Mr.
1924 Latta has mentioned.

1925 Ms. Haney, you testified that before the IG report, you
1926 felt that all the information to the Commissioners were fully
1927 informed, and it is my understanding based upon your written
1928 and oral testimony from the other four, before the IG report
1929 was submitted, you already questioned whether full
1930 information was being provided to the Commissioners. Is that
1931 correct? And I see the four nodding.

1932 Mr. {Stablein.} Yes.

1933 Mr. {Kokajko.} Yes.

1934 Ms. {Kotra.} Yes.

1935 Mr. {Mohseni.} Yes, that is correct.

1936 Mr. {Shimkus.} And I want to also highlight that Ms.
1937 Haney, you are their supervisor.

1938 Ms. {Haney.} Yes.

1939 Mr. {Shimkus.} So if your employees already have a view
1940 that the Commissioners aren't fully informed, we have a
1941 problem here. And would like to yield 5 minutes to Mr.
1942 Sullivan from Oklahoma.

1943 Mr. {Sullivan.} Thank you, Mr. Chairman. Before I
1944 start my questions, I just wanted to--Congressman Gardener

1945 had a question that I don't think was answered clearly by
1946 some of you, and I start with Ms. Haney.

1947 Does the Commission know there is an SER on the shelf
1948 with no legal objection, there is one on the shelf with no
1949 legal objection? Yes or no.

1950 Ms. {Haney.} They are not aware that there is a no-
1951 legal objection. They are aware there is an SER on the
1952 shelf.

1953 Mr. {Sullivan.} That would be no? You can just--

1954 Ms. {Haney.} To answer your full question--

1955 Mr. {Sullivan.} --say no.

1956 Ms. {Haney.} --it would be no.

1957 Mr. {Sullivan.} Okay. And Mr. Kokajko, could you
1958 answer that same question? Does the Commission know there is
1959 an SER on the shelf with no legal objection, just sitting
1960 there?

1961 Mr. {Kokajko.} I agree, no.

1962 Mr. {Sullivan.} No? And Mr. Mohseni, could you answer
1963 that question, please?

1964 Mr. {Mohseni.} I should say I don't know. I am now
1965 very confused what they do know and what they do not know.
1966 It is hard to tell exactly. Some of them may know, some may
1967 not.

1968 Mr. {Sullivan.} That sounds like a problem, doesn't it?

1969 Mr. {Mohseni.} It is.

1970 Mr. {Shimkus.} If the gentleman would yield for one
1971 second?

1972 Mr. {Sullivan.} I yield.

1973 Mr. {Shimkus.} But it is part of the law that the
1974 Commissioners have to be fully informed. Is that correct?

1975 Mr. {Mohseni.} That is correct.

1976 Mr. {Shimkus.} I yield back.

1977 Mr. {Sullivan.} Thank you, Mr. Chairman. Last week we
1978 took testimony from the NRC Inspector General who painted a
1979 disturbing picture of the Chairman's behavior and actions.
1980 Are you all familiar with this report, yes or no? And I will
1981 start with you, Ms. Haney, and go down the line.

1982 Ms. {Haney.} Yes.

1983 Mr. {Kokajko.} Yes.

1984 Mr. {Mohseni.} Yes.

1985 Mr. {Stablein.} Yes.

1986 Ms. {Kotra.} Sadly, yes.

1987 Mr. {Sullivan.} Mr. Mohseni, the IG report found that
1988 the Chairman acts as the gatekeeper for information to the
1989 Commission and strategically withholds information to
1990 manipulate Commission decisions. Are you familiar with that?

1991 Mr. {Mohseni.} That is my experience, what I described
1992 today, based on--

1993 Mr. {Sullivan.} That would be yes?

1994 Mr. {Mohseni.} Yes, absolutely yes.

1995 Mr. {Sullivan.} Mr. Mohseni, aside from the Commission
1996 level information problems, what do you see in terms of
1997 information control among senior management?

1998 Mr. {Mohseni.} I think the senior managers were
1999 contributing to suppression of the information.

2000 Mr. {Sullivan.} To what extent does information control
2001 and suppression permeate the activities of your division and
2002 would you elaborate?

2003 Mr. {Mohseni.} Well, one is the famous memo we have
2004 been talking about where it should have been a policy
2005 decision for the Commission to make, and we should have
2006 developed a policy paper, which is the basis for my
2007 nonoccurrence on that memorandum. Another one is the TER,
2008 another one is the budget. The budget was influenced
2009 adversely by management above me. So the information would
2010 not get to the entire Commission. Similarly the programmatic
2011 impact of the budget or other decisions would not get out
2012 because we never developed a policy position to recommend to
2013 the Commission for the entire Commission to understand fully
2014 the implications of what was going on. So for the past 2-1/2
2015 years, the Commission has never received the full information
2016 to my knowledge.

2017 Mr. {Sullivan.} That is amazing. Dr. Kotra, Dr.
2018 Stablein and Dr. Kokajko, would you agree with Mr. Mohseni on
2019 this? And could you add to his perspective?

2020 Ms. {Kotra.} I have served on the staff of two
2021 Commissioners. I am well-experienced in both drafting as
2022 well as reviewing policy papers for Commissioners. I was
2023 fully prepared to draft an options paper and wanted to draft
2024 an options paper on this very important issue. It was not an
2025 opportunity I was given. I was told to write only a status
2026 paper. There were so many policy ramifications that we were
2027 trying to sort through, and it was turned into a status
2028 paper. Like I said in my testimony, it was with great
2029 reluctance that I agreed to do that. I voiced my preference
2030 for an options paper but went forward as long as the status
2031 was accurately described.

2032 Mr. {Sullivan.} Dr. Stablein?

2033 Mr. {Stablein.} I agree with Mr. Mohseni and believe
2034 his examples are the most apropos that I am aware of.

2035 Mr. {Sullivan.} Mr. Kokajko?

2036 Mr. {Kokajko.} As I replied in my response to Mr.
2037 Mohseni, which was formally required, I did tend to agree
2038 with him, and I think as it turns out, I was correct in that.

2039 Mr. {Sullivan.} Ms. Haney, what Commission policy
2040 guidance directs staff to strip out regulatory findings of

2041 the Safety Evaluation Report to create the TER?

2042 Mr. {Mohseni.} As far as I know, I don't think there is
2043 any precedence for this--

2044 Mr. {Shimkus.} I think he was directing to--

2045 Mr. {Mohseni.} I am sorry.

2046 Mr. {Sullivan.} Directed toward Ms. Haney. Thank you,
2047 Mr. Chairman.

2048 Mr. {Shimkus.} I am sorry.

2049 Mr. {Sullivan.} Thank you, Mr. Chairman.

2050 Ms. {Haney.} I was going to say thank you.

2051 Mr. {Sullivan.} We will get to you next.

2052 Ms. {Haney.} I am not aware of any regulatory guidance
2053 that would proscribe that.

2054 Mr. {Sullivan.} Okay. From your email exchange from
2055 Mr. Mohseni, and that is at Tab 6, page 2, you say your
2056 direction to strip out staff conclusions on their analysis
2057 should be consistent with statements made by the Chairman
2058 that the document would not contain any findings. Was the
2059 preparation of the TER under the direction of Chairman Jaczko
2060 or the Commission?

2061 Ms. {Haney.} The preparation of the Technical
2062 Evaluation Report would be under the Commission, but my
2063 statement, my email, that was one of the considerations that
2064 I took into consideration.

2065 Mr. {Sullivan.} Was the preparation of the TER under
2066 the direction of Chairman Jaczko or the Commission? Was it,
2067 yes or no? Can you answer it quickly? How long have you
2068 worked there?

2069 Ms. {Haney.} I have worked there for multiple years as
2070 you have heard.

2071 Mr. {Sullivan.} Okay.

2072 Ms. {Haney.} I mean, I was looking at the Technical
2073 Evaluation as an office document, and I was considering it
2074 from that standpoint. I did not consider the elements of
2075 your question.

2076 Mr. {Shimkus.} The gentleman's time is--

2077 Mr. {Sullivan.} May I ask one more?

2078 Mr. {Shimkus.} Quickly.

2079 Mr. {Sullivan.} Is there any written document that
2080 outlines specifically what the Chairman desires you to do?

2081 Ms. {Haney.} No.

2082 Mr. {Sullivan.} Okay. Thank you, Mr. Chairman.

2083 Mr. {Shimkus.} The gentleman's time is expired. We
2084 have votes on the floor. We really want to thank you. This
2085 is never easy, and we appreciate your forthrightness, your
2086 calmness under stress and strain and we have to have an NRC
2087 that the American public trusts. You have to have a
2088 government that you trust. We are all in this together.

2089 I want to thank the witnesses for coming today and for
2090 the testimony and members for the devotion to this hearing
2091 today. The committee rules provide that members have 10 days
2092 to submit additional questions for the record, and we hope
2093 that if they do so, in particular, that you would then get
2094 those back to us.

2095 Mr. {Green.} Mr. Chairman, I would like to join you in
2096 thanking our witnesses because that is the purpose of our
2097 committee, and you have heard a lot of our opinions and also
2098 our questions and appreciate your being here.

2099 Mr. {Shimkus.} The hearing stands adjourned.

2100 [Whereupon, at 12:00 p.m., the subcommittee was
2101 adjourned.]