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3 HEARING ON THE ROLE OF THE NUCLEAR REGULATORY COMMISSION IN

4 AMERICA'S ENERGY FUTURE

5 WEDNESDAY, MAY 4, 2011

6 House of Representatives,

7 Subcommittee on Environment and Economy

8 joint with the

9 Subcommittee on Energy and Power

10 Committee on Energy and Commerce

11 Washington, D.C.

12 The Subcommittee met, pursuant to call, at 9:38 a.m., in

13 Room 2123 of the Rayburn House Office Building, Hon. John

14 Shimkus [Chairman of the Subcommittee on Environment and

15 Economy] presiding.

16 Members present from Subcommittee on Environment and

17 Economy: Representatives Shimkus, Murphy, Pitts, Bass,

18 Latta, McMorris Rodgers, Harper, Cassidy, Gardner, Barton,

Upton (ex officio), Green, Barrow, DeGette, Capps, Dingell, and Waxman (ex officio).

Members present from Subcommittee on Energy and Power: Representatives Whitfield, Walden, Terry, Burgess, Scalise, McKinley, Pompeo, Griffith, Rush, Inslee, Markey, and Engel.

Staff present: Charlotte Baker, Press Secretary; Michael Beckerman, Deputy Staff Director; Sean Bonyun, Deputy Communications Director; Anita Bradley, Senior Policy Advisor to Chairman Emeritus; Maryann Brown, Chief Counsel, Energy and Power; Aaron Cutler, Deputy Policy Director; Andy Duberstein, Special Assistant to Chairman Upton; Garrett Golding, Legislative Analyst, Energy; Dave McCarthy, Chief Counsel, Environment/Economy; Katie Novaria, Legislative Clerk; Chris Sarley, Policy Coordinator, Environment & Economy; Peter Spencer, Professional Staff Member, Oversight; Tiffany Benjamin, Democratic Investigative Counsel; Alison Cassady, Democratic Senior Professional Staff Member; Greg Dotson, Democratic Energy and Environment Staff Director; and Caitlin Haberman, Democratic Policy Analyst.

Mr. {Shimkus.} I would like to call the hearing to order and try to move promptly as scheduled. Welcome to the commissioners. I also, before I start with my opening statement, I would like to recognize and acknowledge Congressman Rodney Frelinghuysen from New Jersey who is the cardinal in the Appropriations Committee, Energy and Water. He is watching to see if we actually work, so we will show you that we do a lot of work here, Rodney. Welcome.

And now I would like to recognize myself for my 5 minutes. Nuclear power is vital to our economy, particularly in my home State of Illinois, which boasts 11 operating nuclear reactors at six different locations. That is why the Nuclear Regulatory Commission plays a crucial role in ensuring that we meet our current and future energy needs without sacrificing safety or security. Licensings of new plants and new reactor designs, relicensing existing reactors and considering the Department of Energy’s application for a license to develop and operate a repository or storage site for spent fuel and high-level waste that is away from reactor sites are all issues that the NRC commissioners are called upon to weigh and decide using their best information, judgment, and expertise.

No one wants the NRC to rubber stamp any of these

license applications. We want the NRC instead to give each one the careful scrutiny that it deserves and only approve the applications that meet the rigorous safety and security standards that the commission itself establishes. But that means we expect the NRC to consider the applications and not just sit on them.

We also expect all commissioners to be fully engaged in the policy decisions before the NRC, and right now, we are not convinced Chairman Jaczko is respecting the roles of his fellow commissioners as he should. This is deeply concerning to this committee and should be to the nation as a whole. For any amateur mind readers out there on or off the commission, I want to be clear. Do not read into any of my remarks or questions a preference for a particular thumbs-up or thumbs-down on any adjudicatory matter before the commission.

You commissioners have the expertise. I only ask that the commission follow its own established procedures, take up the work federal law assigns to you, and, when data are in, come to some explicit and timely resolution. I am not confident we are getting that today.

With that, I want to welcome all the commissioners here with us today and look forward to hearing more details on their individual roles and the process for decision making at

the commission. And I would like to yield my remaining time to my colleague, Mr. Whitfield from Kentucky.

[The prepared statement of Mr. Shimkus follows:]

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Mr. {Whitfield.} Thank you very much, and I also want to welcome the commissioners to be here with us today. We look forward to your testimony, and all of us are very much concerned about what has happened in Japan as it relates to nuclear power, and we recognize that you have a very important role to play in guaranteeing the safety as much as possible of the nuclear power plants in the U.S. so that the American public feels comfortable that we do have a safe system.

We also recognize that with increasing electric demand in this country, increasing by 50 percent by the year 2035, nuclear power is going to have a vital role to pay. And as a part of that, how we get rid of the waste is another important issue.

And so I would like to reiterate what Chairman Shimkus said, and that is that it is important that some decision be made at the NRC in a way that all of us clearly understand because when we have spent billions of dollars on the Yucca Mountain Project, for example, and then we have contractual obligations with nuclear power plants that we will get rid of their waste, and they are filing lawsuits against the government and obtaining judgments against the government in the billions of dollars, this is an issue that needs to be

resolved in some way.

And so I look forward to hearing your testimony about the procedures used at the agency to deal with significant issues like this. And although it is not--well, I will yield. The gentleman from Texas had asked for some time. I yield the remaining time to you.

[The prepared statement of Mr. Whitfield follows:]

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Dr. {Burgess.} Well, and I thank the chairman for yielding. Last week, I did join Chairman Shimkus on a trip to Yucca Mountain, and certainly it was instructive to see the facility where so much has been invested by the government and private industry. And as has been stated before, after the events in Japan, the pressing need for a sustainable, long-term answer to our nuclear fuel storage is critical.

I recently introduced legislation to encourage ideas for long-term storage. The Nuclear Used Fuel Prize Act would incentive private industry to come up with ideas for long-term storage. I hope that this hearing will highlight the need for legislation similar to this and ideas that can and will be offered to solve the problem of nuclear waste storage so we can move forward to a more sustainable future with nuclear energy at the forefront of America’s Energy Arm of Interium. Thank you, Mr. Chairman. I will yield back.

[The prepared statement of Dr. Burgess follows:]

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Mr. {Shimkus.} Gentleman yields back his time. The chair now recognizes the chairman emeritus, if he is ready, Mr. Waxman. The chair recognizes Mr. Rush for 5 minutes.

Mr. {Rush.} Well, I want to thank you, Mr. Chairman, and I want to thank the commissioners for being here today. Although the devastating events that happened in Japan have been swept from the front pages in recent weeks, and I might add recent days, I can assure you that my constituents still have a very real concern regarding nuclear safety.

In Illinois, we house more nuclear reactors than any state in the country, and my constituents want to be assured that the NRC have in place common sense protocols for mitigating risks of nuclear disasters, as well as for seniors to safeguard the public in the event that a disaster occurs.

When I visited the Dresden generating station in northern Illinois back in March, I learned that there were some very important distinctions in our nuclear safety protocols as compared to Japan. But there also was some concerns raised that I look forward to addressing here today.

I was pleased to learn that U.S. nuclear facilities have multiple backup systems in place including underground and off-site locations. However, I do have some concerns regarding the placement of NRC resident inspectors and their

closeness, I might add, in location in relationship to the facility managers that they are responsible for monitoring.

While inspectors must have access to all key data and have the appropriate knowledge of the people running these facilities, I want to make sure that this familiarity does not lead to complacency or does not in any way cloud their judgment, their integrity, or their independence.

Additionally, in Illinois, there are remote monitoring systems in place, both inside and outside the plants, that can quickly identify irregularities and alert officials in real time, which I believe needs to be replicated throughout the U.S.

Another issue that will require a national solution is how and where we store the massive 72,000 tons of spent fuel rods that a recent AP report found are located at nuclear reactor facilities throughout the U.S. I am curious to get your expert opinion on whether storing these rods in wet pools or dry cast is the safer option for long-term storage. And should these rods be stored above ground or in secure underground casts to mitigate risks?

And finally, I also believe we must develop a comprehensive, long-term solution for storing these spent fuel rods as well as a plan for secure transportation of these rods when a location is identified.

While I believe nuclear power must be a vital part of our country's overall energy portfolio, we must ensure that we have the best systems and practices in place to safeguard against an unforeseen nuclear accident to prevent widespread disaster like that which is unfolding in Japan. My constituents in Illinois as well as the larger American public expects us to address these pressing issues. So I look forward to discussing these issues more in-depth with the commissioners during the questioning session. And with that, Mr. Chairman, I yield back the balance of my time.

[The prepared statement of Mr. Rush follows:]

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Mr. {Shimkus.} Gentleman yields back his time. Chair recognizes the chairman of the full committee, Chairman Upton, for 5 minutes.

The {Chairman.} Well, thank you, Mr. Chairman. I comment you and Chairman Whitfield for holding this joint hearing. I certainly welcome all the commissioners who join us this morning and your able and highly dedicated staff who accompany you today. Despite your frustrations, you should know that the nation certainly appreciates your service.

NRC must ensure nuclear power plants and other facilities under its watchful eye are built and operated safely and securely. At the same time, the NRC must ensure that the entities it regulates can provide the energy we rely on today and will need tomorrow. Safety, security, and economic success all depend upon each other.

For more than 30 years, the NRC with its collegial commission structure has met that challenge fairly consistently. Commissioners have hailed from both political parties in a wide variety of professional backgrounds, and the staggered terms have ensured that there is always a good mix of veteran commissioners and fresh, new perspectives to address the many challenging policies used that the commission is charged with managing.

These collegial structures has given us confidence that policy decisions made by the commission, which often have safety and economic implications for decades or longer are not subject to the passing political winds of a single administrator or even a single president.

However, I am concerned that the deliberative process necessary for the NRC to develop its independence and technical judgments may be breaking down. And that has profound implications for the public trust in NRC's policy making.

After a quarter of a century of active involvement in nuclear energy policy, both oversight and legislation, I have developed an appreciation for the NRC's independent judgment on important technical and safety matters. I have never asked a commissioner to vote a particular way, and frankly I would never even suggest that I could or should influence how you vote on any matter because that is your job, and I respect your expertise. But as your authorizing committee chair, I want to know that the trains are running on time and all crew are on board.

The NRC should appropriately serve as an independent, strong watchdog, actually a pit bull, to ensure safe nuclear power, should have all the tools necessary, even one, so that there is no chance of a Monday morning quarterbacking down

the road. But it should not be so deliberative that it prevents any nuclear development due to unreasonable cost or delays. The industry needs to know the rules and when they comply, they are able to move forward.

We also need to constructively deal with long-term nuclear waste. Simply shutting the doors on an already-spent $12 billion for Yucca is not acceptable, especially with no other alternative. We will explore these and other concerns during today’s hearings and beyond. We will not let up until our oversight duties are fulfilled and either the commission convinces us that it is operating the way the Congress intended, or we change the law to ensure that it does. And I yield the balance of my time to Mr. Barton.

[The prepared statement of Mr. Upton follows:]

********** COMMITTEE INSERT **********

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Mr. {Barton.} Thank you, Mr. Chairman. I want to thank our commissioners and the chairman of the NRC for being here today. As you all know, the NRC has the responsibility to establish and enforce the safety and security standards for all civilian applications of nuclear technology. It is a congressionally-mandated mission. It has to license and regulate the Nation’s civilian use and byproducts, source, and special nuclear materials to ensure the adequate protection of the public health and safety, to promote the common defense and security of the environment.

To quote some of you, your own commissioner’s statements, this is from Commissioner Peter Lyons. ``In my view, without the nuclear powers industry’s continued perseverance toward adequate safety and security, nuclear energy will not play a future role, and our nation will have an immense energy shortfall.'' It is my understanding that all the commissioners before us today share that view.

Commissioner--is it Svinicki? Am I close? Svinicki. You quoted the Principles of Good Regulation that were issued by the commission in 1991, and I quote. ``There are fundamental guideposts to ensuring the quality, correctness, and consistency of our regulatory activities.'' You went on to say that you believe the principles articulate the

standards by which the regulated community and the broader public is asked to judge the NRC as a regulator and as an institution that is charged with ensuring the public trust.

Back in 1982 when I was a White House fellow at the Department of Energy, I worked on a bill which became law called the Nuclear Waste Policy Act 29 years ago. It established procedures for establishing a permanent underground repository for high-level nuclear radioactive waste. 1987, as a young congressman, I helped to amend the NWPA to designate Yucca Mountain as the only site to be characterized as a permanent repository.

As chairman of this committee back in 2005, I was told in no uncertain terms that the NRC would fulfill its mission, would look at that proposed license, and would make a decision in a timely fashion. Yet here we are today in 2011, and that license application is still pending at the NRC and has not been acted upon in a definitive way. In this member’s opinion, that is simply unacceptable.

I want to thank the commissioners for being here today but point out to my friends on the minority side that we have four of the five here, so it is possible to get people to appear before this committee. With that, I yield back, Mr. Chairman.

[The prepared statement of Mr. Barton follows:]

********** COMMITTEE INSERT **********

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Mr. {Shimkus.} Gentleman yields back his time. The chair now recognizes Chairman Emeritus Waxman for 5 minutes.

Mr. {Waxman.} Thank you very much, Mr. Chairman. The mission of the nuclear regulatory commission is to license and regulate the Nation’s civilian use of nuclear materials to ensure adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. Today, we will have the opportunity to hear from four of the five NRC commissioners about their efforts to carry out this mission.

It is an important time for NRC and for America’s nuclear energy industry. First, the Nation’s fleet of reactors is proposed to grow. Utilities have submitted license applications to NRC to build 26 new nuclear reactors.

Second, America’s strategy for storing nuclear waste is at a crossroads. The president has determined that the Yucca Mountain Facility is not workable and has created a blue ribbon commission to review alternatives for storing, processing, and disposing of spent nuclear fuel and nuclear waste, and that report is due out next summer. It will help guide us on how to use 21st century technology to safely store the country’s nuclear waste.

And third, the world is facing the most serious nuclear

disaster in decades. NRC is continuing to review the safety of American nuclear reactors in light of what happened at the Fukushima Power Plant in Japan. It is too soon to say with certainty what caused the accident in Japan and what role, if any, lax regulatory oversight of the industry played in the catastrophe.

Here in the United States, we are not immune to catastrophic events resulting from regulatory failures as we saw with the 2008 financial collapse and the BP oil spill. It is our duty to learn lessons from the Fukushima disaster and close any gaps in our oversight of America's nuclear fleet.

Mr. Chairman, I thank you for holding this hearing. The committee needs to be performing regular oversight hearings such as this one, and I look forward to the testimony from today's witnesses. And I welcome them today at this hearing. Yield back the balance of my time.

[The prepared statement of Mr. Waxman follows:]

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Mr. {Shimkus.} Gentleman yields back his time. Now again I would like to welcome the commissioners. As Chairman Emeritus Waxman said, we have four of the five. One is traveling overseas, so that is why we don’t have them all. And the history of many members of this committee, we probably haven’t had the NRC commissioners here for over a decade. It is timely that we do it, but we actually put this in place prior to the Japan event. We were planning to have you all here. We are glad that you are here.

It is my understanding that one opening statement will be made by the commissioner, and then we will then go into our 5-minute questions.

The comment is that the submitted statement for the record was a commission-reported submission. Then everybody else will have a chance to make oral remarks. So with that, I would like to recognize Chairman Jaczko for 5 minutes.

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^STATEMENTS OF GREGORY B. JACZKO, CHAIRMAN, U.S. NUCLEAR REGULATORY COMMISSION; KRISTINE L. SVINICKI, COMMISSIONER, U.S. NUCLEAR REGULATORY COMMISSION; WILLIAM D. MAGWOOD, IV, COMMISSIONER, U.S. NUCLEAR REGULATORY COMMISSION; AND WILLIAM C. OSTENDORFF, COMMISSIONER, U.S. NUCLEAR REGULATORY COMMISSION

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^STATEMENT OF GREGORY B. JACZKO

} Mr. {Jaczko.} Well, thank you, Mr. Chairman, Ranking Member Rush and members of the subcommittee.

Mr. {Shimkus.} Chairman Jaczko, check the microphone again. Make sure it is pulled close.

Mr. {Jaczko.} Is it on now?

Mr. {Shimkus.} Yes, sir.

Mr. {Jaczko.} I will start again. Mr. Chairman, Ranking Member Rush, members of the subcommittees, the Chairman and Ranking Members of the full committee, my colleagues and I are honored to appear before you today on behalf of the U.S. Nuclear Regulatory Commission. As Chairman Shimkus indicated, Commissioner Apostolakis is unable to be here because of travel, and he asked me to convey his regrets that he was not able to attend today.

For the first time since 2007, the commission is operating with five members, and I am grateful for my colleagues for their experience and expertise that they have brought to our discussions and deliberations.

Since I previously testified before you, I have traveled to Japan to convey a message of support and cooperation on behalf of the agency to our counterparts there. While meeting the demands of the Japan situation, our staff has also remained focused on our essential safety and security mission, and I want to recognize their tireless efforts and dedication. We are very proud of their work.

The NRC continues to characterize the status of the Fukushima site as static. While we have not seen or predicted any new significant safety challenges, we have only seen incremental improvements towards stabilizing the reactors and spent fuel poles.

Given the devastating conditions at the site due to the earthquake, tsunami, and hydrogen explosions, progress, while being made, is very challenging as important equipment and structures were either damaged or destroyed in the event or are not accessible due to high radiation fields. The government of Japan and the nuclear industry are providing significant resources and expertise to address the situation, and we will continue to provide support as needed.

Our agency has a responsibility to the American people to undertake a systematic and methodical review of the safety of our domestic facilities in light of the natural disaster and the resulting nuclear situation in Japan. This review must be coupled with a sense of urgency, however, as there are likely lessons to be learned and changes we will need to make.

On March 21, my colleagues on the commission and I established a senior level agency task force to conduct a comprehensive review of our processes and regulations to determine whether the agency should make additional improvements to our regulatory system. This review will be conducted in both the short-term and the longer-term timeframe.

NRC’s primary responsibility is ultimately to ensure the adequate protection of the public health and safety of the American people. Review of the current Japan information combined with our ongoing inspection and licensing oversight gives us confidence that the U.S. plants continue to operate safely. In the meantime, there has been no reduction in the licensing or oversight function of the NRC as it relates to any of our U.S. licensees.

I would like to turn briefly to the recent accomplishments and future challenges of the agency. As a

relatively small, independent federal agency with approximately 4,000 staff, we play a critical role in protecting the American people and the environment. We currently license, inspect, and assess the performance of 104 operating power plants as well as many fuel cycle facilities and research and test reactors. Furthermore, nuclear materials are in use at thousands of hospitals, universities, and other locations around the country. In each of these, users present different challenges for the NRC and requires that the NRC develop and sustain a diverse array of regulatory capabilities.

The past year has been a challenging time. In 2010, we saw an increase in the number of automatic SCRAMS for a second consecutive year. At the current time, three plants still remain in column three of the reactor oversight process action metric, which is our primary tool for providing oversight and information about oversight of the facilities.

We have also seen challenges with human performance and material degradation, incidents that have been made more significant than we have seen in some time. Recent events serve as a vivid reminder that we cannot become complacent and that we have not encountered all the different types of natural occurrences, equipment failures, and human performance deficiencies that could impact safety.

Over the past year, the agency has made significant progress on a number of long-standing issues. The commission revised and finalized the waste confidence rule, providing a measure of certainty in an important and high visibility area. The NRC has also recently taken steps towards closing out long-standing safety issues involving fire protection and containment sump issues known as GSI 191.

At the same time, we have proceeded with a number of new reactor issues, including moving to public comment the ABWR and the AP1000 design certification amendments as well as making significant progress on the ASBWR design certification, also moving that to public comment, high tech maintenance and new reactor risk metrics. In other areas, our staff lead the inter-agency radiation source protection and security task force. The agency completed a comprehensive review of its enforcement policy, and we have made substantial progress in evaluating and enhancing our alternative dispute resolution program.

And in keeping with our historic commitment to openness and transparency, the NRC implemented the president’s open government directive, adding new tools to strengthen and broaden public input and engagement.

Currently the NRC is actively reviewing 12 combined license applications to construct and operate new nuclear

power reactors. Five different designs are referenced in these applications, and the NRC is currently reviewing the design applications for certification or amendment.

The NRC is also performing safety security and environmental reviews of facility applications of uranium deconversion facility application and applications for new uranium recovery facilities. And as early as late summer, the commission may conduct the first mandatory hearing on new reactor licenses since the 1970s. As we all know, issues related to Yucca Mountain have garnered considerable attention in recent months. The 2011 appropriations bill has been signed into law, and it provides $10 million for the NRC staff to complete the effort, to thoroughly document the staff's technical review, and preserve as appropriate for publication and public use.

Mr. Chairman, Ranking Members Rush and Green, and members of the subcommittees, this concludes my formal testimony today. On behalf of the commission, thank you for the opportunity to appear before you, and we will be pleased, and I will certainly be pleased to answer any questions you may have. Thank you.

[The prepared statement of Mr. Jaczko follows:]

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Mr. {Whitfield.} [Presiding] Well, Chairman Jaczko, thank you very much for your statement, and we certainly want to give the other commissioners the opportunity to make any remarks that they may like. So, Commissioner Svinicki, I will recognize you for up to 5 minutes.

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^STATEMENT OF KRISTINE L. SVINICKI

} Ms. {Svinicki.} Thank you, Chairman Whitfield, Ranking Members Green and Rush, and members of the subcommittees for the opportunity to appear before you today. I appreciate that you have granted me a few minutes to express some individual perspectives as a member of the commission regarding NRC's role in the important energy issues before your subcommittees. Chairman Jaczko has addressed the breadth of the NRC's ongoing activities in the written statement he has submitted on behalf of the commission.

The events at Fukushima in Japan are a sober reminder that nuclear technology is unique, and, as I have heard so many of my colleagues say since these events, it requires a total, absolute, and unwavering commitment to nuclear safety and our professional conduct.

The NRC has initiated a systematic review of these events while maintaining its focus on the safety and security of nuclear materials and facilities here in the U.S. The NRC staff continues its work as well on the many routine licensing, rule-making and inspection activities before the agency.

We appear before you today as a commission. In my 3

years of service as an NRC commissioner, I have come to believe that the Congress was quite deliberate in creating a commission structure atop the NRC, given the complexity of the issues expected to be addressed by the agency, and that commissions are not created for the purpose of fostering unanimity of opinion. Rather, I believe that Congress intends that the push and pull of diverse views on any such small, deliberative body, such as ours, will hopefully result in outcomes that have been that have been examined from different angles, tested through debate and argument, and are stronger as a result.

One such issue before the commission now and under review by this committee is Yucca Mountain. Since October of last year, I have been public in my disagreement with the chairman's direction to begin the closeout of the NRC's technical review of the Yucca Mountain licensing application under the terms of the continuing resolution, particularly while an adjudicatory appeal related to the secretary of energy's request to withdraw the application is pending unresolved before the commission itself.

I cast my vote in that adjudicatory appeal on August 25, 2010. The vote I cast was based on thorough study and review of the underlying record, including the licensing's board decision as well as the substantial briefs filed before the

commission by parties to the proceeding. I have a strong conviction for the position I have taken, and I have not altered my judgment since that time. The commission has failed to complete final agency action on this matter. Nevertheless, I stand ready to do my part at any time to bring this matter to conclusion.

The Yucca Mountain issue is one of many currently before the NRC. As I anticipate this hearing will make clear, the NRC has an important and decisive role to play in America's energy future. The ability of NRC to perform this role is an appropriate area of scrutiny as your subcommittees debate the agency policies of the country now and into the future.

In my personal experience, I have found the NRC to be an organization of extremely dedicates safety professionals who are ever mindful of their important obligations to the nation. My objective each day is to be the kind of commissioner they deserve. Thank you again for this opportunity, and I look forward to answering your questions.

[The prepared statement of Ms. Svinicki follows:]

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Mr. {Shimkus.} Thank you. And now the chair would like to recognize Mr. Magwood for 5 minutes.

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^STATEMENT OF WILLIAM D. MAGWOOD

} Mr. {Magwood.} Thank you, Chairman Shimkus, Chairman Whitfield, Ranking Members Rush and Green, and members of both subcommittees for providing us an opportunity to speak with you today. The timing of today's hearing is apt as there are many issues facing the commission and facing the Nation as a whole.

Clearly most of the attention in recent weeks has been focused on the events in Japan since the devastating earthquake and tsunami of March 11. These natural disasters have caused immense destruction, and in their wake, some 25,000 people are dead or missing and 300,000 have lost their homes. As a friend to Japan, I continue to share the sorrow of the Japanese people.

For the NRC, the significant damage suffered by the Fukushima Daiichi Nuclear Plant has garnered our attention for nearly 2 months. This damage has had significant impacts on the lives of many people in Japan and on the environment around the planet. Watching these events unfold from far has been both very sad and very sobering.

In my years as an NRC commissioner, I have been continually impressed with the professionalism and commitment

of the NRC staff. The staff's response to the events in Japan has provided just one more example. Within hours of hearing about the situation at the nuclear plant in Japan, the NRC staff again volunteered to travel to that country to provide whatever assistance might be possible. Within a few days, there were 11 NRC experts on the ground in Japan. Many other staffed the agency's operations center around the clock, and others answered public call-in lines.

Meanwhile, during all this activity, most of the staff remained focused on their primary mission of protecting the health and safety of the American people. This country should be proud to have people like that serving in their interests.

While I believe the prospect of a truly catastrophic event has largely passed, Japan faces a long, difficult task to address the hazards presented by this damaged facility. Japan also faces a very tough challenge in fully absorbing the lessons learned from these events, just as we had to learn from Three Mile Island.

I encourage my friends in Japan to examine every detail of the events associated with the Fukushima Daiichi Plant in a relentless, unblinking, and transparent manner, and to make any changes that such a review may prompt.

I am convinced that U.S. nuclear plants continue to

operate safely. I also believe that many physical and operational improvements, implemented over the years, including those made after the terrorist attacks of September 11, 2001 provide important capabilities that will help ensure the safety of U.S. plants under many adverse conditions. While I believe that most of the lessons learned must be learned by Japan, it is clear that this commission would be remiss if it did not review the events of Fukushima to determine what lessons, if any, can be applied to their operations here in the United States.

As you have already heard, the commission has approved the formation of an expert task force to consider what lessons can be learned from the situation in Japan. In addition, I have been pleased to see that U.S. nuclear industry, which I should note has also provided substantial support to our colleagues in Japan, has also established a steering committee to coordinate their review of the events in Japan and consider what changes might be made.

While it is important that we study the details of how events unfolded at Fukushima, it is my view that we must also assure that the safety forest is not obscured by technical trees. While many questions remain about what transpired at the Fukushima Daiichi plant, some lessons are being learned right now by simply concerning probing questions about

current practices in the U.S. that are prompted by those events.

Perhaps the largest lesson I have learned from this event has been that nature will often present us with challenges that exceed even our most conservative expectations. Given that, we must place as much attention on how we recover and mitigate disasters as we place on how to resist them in the first place.

As the United States assesses the events of Fukushima, I believe that America's independent regulators are well suited to evaluate and respond to the lessons we will learn. I also believe that our commission structure will serve us well as it has for many years. The commission structure both reflects a broad policy direction of the elected government and preserves the vital independence and credibility of the technical work for the agency.

Our structure also has the development of a highly professional technical staff and very stable long-term planning, both of which are much more difficult to achieve in the standard agency government's model. I have noted in the past the other federal agencies might benefit from such a structure.

Therefore, we need responsible individuals in government, including members of this agency's congressional

oversight committees, to protect the NRC's independence and guard against any erosion. Given the fluid future, it may be appropriate to seek ways to bolster NRC's independent status. Congress, if it wishes to maintain an independent NRC, may consider an update to our organic legislation and Energy Reorganization Act.

Congress may also find that it is time to provide additional clarity regarding the operation of the commission itself. While I believe that Congress's expectations associated with the commission's roles and responsibilities are well-documented in the legislation, I think it could be enhanced further.

I also think it would enhance the organization if Congress would provide additional guidance regarding the responsibilities and authorities of various elements of senior staff, independent of the commission.

Finally I would like to thank the subcommittee for the long and effective oversight of the NRC. You supported the agency's growth in recent years as we prepared for the development of new nuclear technologies and projects. You have also supported our efforts to encourage nuclear technology education.

As my tenure as commissioner continues, I look forward to working with you to further enhance the working of the NRC

as we continue our singular mission to protect the health, safety, and security of the American people. Thank you.

[The prepared statement of Mr. Magwood follows:]

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Mr. {Shimkus.} Thank you. The chair now recognizes Commissioner Ostendorff for 5 minutes.

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^STATEMENT OF WILLIAM C. OSTENDORFF

} Mr. {Ostendorff.} Thank you, Chairman Shimkus, Chairman Whitfield, and Ranking Members Rush and Green. I appreciate the opportunity to be before you today. I also appreciate this committee's and the subcommittee's interest in the role of nuclear energy in our country's energy future.

I have been a commissioner for just over 1 year. In that time, I have gained a deeper understanding of the NRC's licensing and oversight programs and their importance to protection of public health and safety in our Nation.

As a commissioner, I firmly believe in the NRC's principles of good regulation. Independence, openness, efficiency, clarity, and reliability. These principles are absolutely vital to the proper functioning of our agency. Joining the comments of my fellow commissioner colleagues, I agree with them completely that the NRC staff we work with are professional, enthusiastic, and committed to ensure that we carry out our mission effectively. It is an honor to be part of that NRC team.

Last year, I spent considerable time talking to members of the public, anti-nuclear groups, pro-nuclear groups, visiting nuclear power plants, facilities, et cetera. And I

found getting out and about around the country is absolutely essential to my performance as a commissioner. The events that have unfolded in Japan at Fukushima Daiichi are significant. On the one hand, I firmly believe that our existing 104 commercial nuclear power plants in this country are indeed safe.

The past few weeks we have seen natural events with tornados. With the Surry Nuclear Power Plant in Virginia, the Browns Ferry Plant in Alabama were both plants that have demonstrated their capabilities to safely shut down due to a loss of offsite power caused by severe weather conditions.

On the other hand, I know that the NRC must and will conduct a thoughtful and rational examination of our regulatory framework as informed by the Japanese lessons learned. Toward that end, I am confident that the task force that we have chartered will perform a systematic and methodical review of our regulatory framework to ensure protection of public health and safety. If there are changes to be made, I am sure we will make them.

In closing, I want to thank the subcommittees for their interest. I look forward to your questions. Thank you.

[The prepared statement of Mr. Ostendorff follows:]

********** COMMITTEE INSERT **********

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Mr. {Shimkus.} Thank you. Now the chair would like to recognize himself for 5 minutes for questions. Chairman Jaczko, this is for the other commissioners. You have had a chance to visit with us already. To the commissioners, I had an interesting discussion of your voting process when the chairman appeared before the hearing on March 16. I asked him about the licensing board decision denying the DOE's motion to withdraw its Yucca Mountain application. I asked if all commissioners had filed votes on the matter. Chairman Jaczko answered, and we have the transcript, ``we have filed what I consider to be preliminary views that we exchange among colleagues.''

So I asked Mr. Jaczko is it your position that you have not filed final votes? He replied ``I would consider votes more akin almost to prepared statements and remarks of members of the commission. The practice of the commission is to circulate these prepared remarks on any of the things that we do, and then based upon those circulated views, we work to see if there is a majority position.''

Now to the commissioners. Is that the way you describe those written votes you file, that they were merely prepared remarks? And we start with Commission Svinicki.

Ms. {Svinicki.} As I indicated in my prepared remarks,

when I cast my vote in the high level waste matter in August, it was based on a very thorough review of the underlying record, and I consider that I took my position at the time that I cast that vote in August of 2010. I have not revisited the judgment I made at that time or altered the position I took in August.

Mr. {Shimkus.} Commissioner Magwood?

Mr. {Magwood.} I spent a great deal of time thinking about how to evaluate the very interesting and unique issues that were presented by the DOE motion. And my conclusion was something that I took very seriously and spent a lot of time developing. And after working with my staff for quite some time, I wrote a very, very lengthy and, I think, quite eloquent, if I say myself, vote on the matter. And I really have not even considered changing from that. So, no, I consider that to be my final personal statement on the matter.

Mr. {Shimkus.} So you consider it a vote?

Mr. {Magwood.} I consider it a vote.

Mr. {Shimkus.} Commissioner Ostendorff?

Mr. {Ostendorff.} Chairman Shimkus, I cast my note on the Yucca Mountain legal motion to withdraw decision August 26, 2010. I did not view that vote as a preliminary set of views or initial remarks. I viewed it as a final concrete

legal decision from my own commissioner office perspective.

Mr. {Shimkus.} So they are not prepared remarks. They are in essence votes? And I hear nodding from the three--

Mr. {Ostendorff.} Yes, correct.

Mr. {Shimkus.} --commissioners that are here. Thank you. Chairman Jaczko said that based upon those circulated views, you work until you have a majority position. Does the NRC have to wait for a majority position?

Ms. {Svinicki.} I--if I may, and I apologize for this answer in advance, but the commission’s decision is issued in the form of an order, and it would be affirmed at a public affirmation session. So I would characterize that the--what the commission has been looking at is what form that order would take regarding the decision.

So though all--though I cast my vote and took a position that I have not revisited, the votes are not what we issue so that the outcome can become publically known. It takes the form of a commission order. And so that is what has been under development in the intervening time. But to your question of whether a majority is required, I interpret the commission’s procedures to permit for an outcome of a commission that would be divided, and that is the instance in which there would be no majority. If there were four participating members, a commission could be evenly divided.

If your question is is that provided for in our procedures, the answer is yes.

Mr. {Shimkus.} Commissioner Magwood?

Mr. {Magwood.} I don’t think I can add anything to what Commissioner Svinicki said. I agree with her interpretation.

Mr. {Shimkus.} That is fine. I think--let me go to my last question because I am running out of time myself. Is issuing a final decision on DOE’s motion to withdrawal a license application an NRC priority, yes or no?

Ms. {Svinicki.} I can speak only to my personal priority.

Mr. {Shimkus.} That is what I am asking.

Ms. {Svinicki.} It is a personal priority for me. Yes, sir.

Mr. {Shimkus.} Commissioner Magwood?

Mr. {Magwood.} I see it as a priority just as many such issues are, but, you know, I think it is an issue we will continue to work on.

Mr. {Shimkus.} Commissioner Ostendorff?

Mr. {Ostendorff.} Yes, and I will also add that I have taken steps since I cast my original vote to try to get the commission to achieve majority position in order to reach an order.

Mr. {Shimkus.} Chairman Jaczko?

Mr. {Jaczko.} It certainly is a priority, and, I think, as Commissioner Ostendorff indicated, we are working to achieve the majority position, as he indicated, we do not yet have.

Mr. {Shimkus.} But as the previous question identified in our comments in March, they are assuming votes have been cast, and they can make a decision. It doesn’t have to be a majority view. And I yield now to Mr. Green for 5 minutes.

Mr. {Waxman.} Mr. Chairman, I am going to--

Mr. {Shimkus.} I am sorry. Chairman Emeritus.

Mr. {Waxman.} With the courtesy of the two ranking members on the subcommittee, they allowed to go ahead of them because of a conflict issue.

Chairman Jaczko, our subcommittee chairman, Chairman Shimkus, has alleged that your decisions about Yucca Mountain are ``illegal'' and ``politics at the highest level.'' So I want to ask you about these assertions. The commission has provided thousands of pages of documents to our committee relating to the NRC’s review of the Yucca Mountain license application.

We have examined these documents, and by and large, I don’t believe they support Chairman Shimkus’s allegations. The documents show that you closely consulted with the NRC General Counsel before making any decisions, but it does

appear that at least one individual on the NRC staff had concerns regarding the Yucca Mountain license application withdrawal. On October 18, 2010, Dan Grazer, the administrator for the licensing support network, sent an email to Judge Roy Hawkins, the chief administrative judge of Atomic Safety and Licensing Board Panel. Mr. Grazer is in charge of the data management system for the Yucca licensing proceeding.

In this email, Mr. Grazer states ``I believe that the action directed by the CFO, executive director of operations, and chairman, to begin shutdown of the high level waste program, in addition to being inconsistent with the last public agency decision on the matter and inconsistent with authorization, language and appropriations, language for both fiscal year 2010 and 2011 is a violation of the Nuclear Waste Policy Act and illegal.''

Chairman Jaczko, Mr. Grazer is claiming that you violated federal law by directing staff to close down review of the Yucca Mountain license application. Are you aware of Mr. Grazer’s allegations?

Mr. {Jaczko.} I have seen the email that you are referencing.

Mr. {Waxman.} Do you agree with this assessment that it was illegal to stop the review of the Yucca Mountain?

Mr. {Jaczko.} No, I do not.

Mr. {Waxman.} The NRC has produced other emails from Mr. Grazer. Chairman Jaczko, I would like to ask you about another one. On September 7, 2010, Mr. Grazer sent an email to another NRC employee stating that a Yucca Mountain report called SER Volume 3 ``may not get out the door before election day. Chairman stonewalling on the decision may be effective as there is means by which read gets no bad news before election day.'' Mr. Grazer appears to be alleging that you delayed action on the Yucca Mountain report for political purposes. And again this is a serious allegation. Chairman Jaczko, what is your response to Mr. Grazer’s application?

Mr. {Jaczko.} I made a decision to have the staff stick to the timing that they had previously indicated for the release of any of the documents related. It was in no way a political action or intended to reference any other political figure or direction from any other political figure.

Mr. {Waxman.} Your fellow commissioners with you today say that they already voted on this matter, as I understand their testimony. Mr. Grazer’s assertions are similar to those of Chairman Shimkus. Do you believe they substantiate his claim that you acted illegally or for political reasons?

Mr. {Jaczko.} No, I do not.

Mr. {Waxman.} Do you want to give us an explanation? Do you want to talk further about this matter?

Mr. {Jaczko.} Well, as I said and what I indicated previously to the committee, the way the commission's voting process works is we circulate these votes. The votes are then for all of us to consider, as you have heard from some of my colleagues. Some of them do not intend to perhaps change their positions. That then makes it difficult to come to a resolution on the matter if commissioners are not willing to work to come to compromise and move forward in a way that we can have an order for the commission.

So that continues to be the effort that we are engaged in, is to bring that matter to conclusion. But it is not uncommon for the commission to have matters in front of it that take time to resolve because the process that the commission uses is a written notation voting process. It is not a formal voting session where we come to conclusion at a specific time.

So all the actions that we have taken, I believe, are fully consistent with the procedures and policies of the commission. And Yucca Mountain is a complicated issue. There are complicated legal questions in front of us, and we are taking the time to thoroughly review those and make sure we make a good decision.

Mr. {Waxman.} As I understand the Yucca Mountain issue, it is not a question of voting on Yucca Mountain's application as submitted by the DOE. DOE has withdrawn that application. Is that--

Mr. {Jaczko.} That is correct.

Mr. {Waxman.} So the question is whether they have the ability to withdrawal the application?

Mr. {Jaczko.} The question in front of the commission is, one, whether or not we would review a decision made by a licensing board at the commission, and then, if we did decide to review that, whether, in fact, we would agree or disagree with that decision to allow DOE to withdraw the motion?

Mr. {Waxman.} And you feel you are following the proper legal procedures.

Mr. {Jaczko.} Correct, and on a separate track, we are --because of the budget situation, we are working to close down our review of the application. And that was based on a decision that I made in early October, which was fully consistent with appropriations law, with GAO guidance, with circulary 11 and all the relevant guidance for dealing with a continuing resolution and the way we process our budget in that regard.

Mr. {Waxman.} Thank you very much.

Mr. {Shimkus.} And I thank you. Yields back his time.

Chair now recognizes the chairman of full committee, Mr. Upton, for 5 minutes.

The {Chairman.} Well, thank you, Mr. Chairman. I just want to say a couple of things before I get to our questions. There is a lot of interest on Yucca Mountain, as you know. We have had some private discussions, and we are beginning an investigation. And this is--today's hearing is not going to be the end of this.

We are going to pursue this with both of our subcommittees, Energy and Power as well as the Environment and the Economy as well as the Oversight Investigation Subcommittee. We have asked for a whole series of documents from both DOE as well as the NRC, and we are just starting to scratch the surface in terms of where we are. And we look forward to pursuing that. We look forward to your cooperation as we begin to ask questions, and this will not--this is not ending today. That is for sure.

I have a couple questions. Chairman Jaczko, as you know, Secretary Chu has made it a very high priority for DOE to support deployment of a small modular reactor by 2020, perhaps even earlier than that. These SMRs offer improved financing to the rate payers but also offer the most advanced safety features. I understand that the TVA is working to build as many as six of these lightwater SMRs. I would like

to get your perspective on these in terms of their safety benefits, the licensing path forward, as well as what is your plan to carry on the Fukushima lessons learned activities to continue the licensing activities on these promising reactors?

Mr. {Jaczko.} Well, currently we have been in close contact with the Department of Energy as they develop their plans for supporting small modular reactors. We are anticipating the TVA submitting a construction authorization next year, probably sometime the middle of next year. We are budgeted and prepared to review that application. That would be for a small modular reactor.

At the same time, we are preparing as well to review other designs that are also small modular reactors. And we are prepared to do that. And we have the resources, again, subject to congressional approval in the fiscal year 2012 year.

So I think we are in the good place to review those. The commission recently held a meeting. Unfortunately I was in Japan at the time, but at that meeting, we discussed several policy issues that are related to the small modular reactors. And I believe we are on target to address those issues and be prepared to process those applications.

The {Chairman.} So is it your expectation that, in

fact, the TVA--or the desire to have these in place and done by the end of this decade is an achievable goal?

Mr. {Jaczko.} Well, I certainly think the agency is in the position to do our part. Anytime you are dealing with the review of an application, it is an activity that involves many parties including the applicants. So assuming that they are able to provide a good, high-quality application, that they are able to provide the budgets to support that application, we believe we have the resources to review it.

I would add--I think you mentioned interest in Japan--we are moving forward with two reviews to look at the situation in Japan. And if we do get information that comes out of it that tells us we need to make changes, we will make whatever changes are necessary, whether it is an existing facility or an application under review, such as a small modular reactor.

The {Chairman.} For the commissioners, are you confident that all of you are receiving the information that you need to do your job from the staff. Is there an equal sharing of information that all of you are able to have to make a decision?

Ms. {Svinicki.} To the extent that the question raises the do-you-know-what-you-don’t-know aspect, it is a little bit hard to answer. But post Three Mile Island when the Congress rejected a single administrator structure, it did

emphasize the importance of all commissioners having access to information in existence at NRC at the same time. So it is a very important, I think, objective and goal of a commission’s structure. It is difficult to discern if I have access to everything when I am not sure what might or might not be in existence.

But it is something that I am fairly strident on asserting my right to see information in existence at the agency.

The {Chairman.} So you do feel that you get the proper information and--I mean have you been denied information?

Ms. {Svinicki.} Information can be in different states of finalization, and so--I think there has been a back-and-forth between my office and the agency staff occasionally on when it is most appropriate for them to share their work product with me. So I don’t want to say it is a straightforward every single time I ask for something. It may be that there is a little bit of push-back in terms of the work product not being ready for me to look at it.

Mr. {Magwood.} Like I said, I would say as a general matter, I am able to receive information I need to make decisions. I mean I think, as Commissioner Svinicki indicated, there have been occasions where, for one reason or another, information hasn’t been forthcoming, but I think the

majority of times, if I ask for something, I get it immediately. So as a general matter, I think I am able to get information required to do what I need to do.

Mr. {Ostendorff.} I would add that by and large, I do receive the information I feel like I need. There have been some problem areas that I have pointed out, either through my staff, our staff, or the chairman's office. I have had a couple of issues with how policy matters are brought before the commission from the staff, and I have communicated those to the chairman in his office.

The {Chairman.} Thank you. I know my time has expired.

Mr. {Shimkus.} The chair now recognizes Ranking Member Green for 5 minutes.

Mr. {Green.} Thank you, Mr. Chairman. I ask unanimous consent that my statement be placed in the record. Mr. Chairman.

Mr. {Shimkus.} Without objection, so ordered.

Mr. {Green.} Let me just touch on the Yucca Mountain issue in the budget. There are some of us who are concerned that the decision made to shut down, you know, after we spent $14 billion, and ultimately our country is going to need some type of long-term waste disposal facility for high-level nuclear waste.

Mr. Chairman, let me ask you though. The continuing

resolution that this house passed just recently last month on a bipartisan basis, the budget to avert the government shutdown, the budget zeroed out funding for Yucca Mountain and Department of Energy and appropriated $10 million to the NRC to close out the license review. Is that correct?

Mr. {Jaczko.} Yes.

Mr. {Green.} Okay, now whatever happened before that or last fall or anything like that is actually moot because it is our job, if we have a difference of opinion, to provide appropriations to make sure we continue that. And, you know, we have a really nice hole in a mountain out there that somewhere along the way we are going to need to have a facility for our country for those rods because we continue to expand. And I know there is--we have had some success in keeping them on site, but that is not going to be a permanent solution. So we will need to deal with that, and it sounds like Congress needs to work at that.

Let me get to another issue. Our subcommittee in Environment and Economy has chemical safety or CFATS legislation. Yesterday, five men were arrested outside a nuclear waste processing plant in England and detained under the UK’s terrorism act. While we are still learning more about the facts surrounding their arrests, incidents like those reinforce our need for safety and secure nuclear

security infrastructure.

Chairman Jaczko, what mechanisms does the NRC currently have in place to handle terrorism threats at U.S. nuclear facilities?

Mr. {Jaczko.} Well, we have a very, I think, comprehensive and sophisticated program to deal with security. It starts with our requirements on the nuclear power reactors. They are required to have very robust security programs. We test those security programs with actual simulated attacks on the facility, and that is done for every facility once every 3 years.

As part of our normal inspection activities, we inspect all the security systems on a periodic basis to ensure the cameras, the detection systems work.

Mr. {Green.} Does that include unannounced visits?

Mr. {Jaczko.} That is part of our normal inspection process, and generally some of that work is carried out by our resident inspectors who are at the site. And they will pick and choose some aspects of their review to look at certain areas. And they do that often on an unannounced basis.

Mr. {Green.} Since I only have a couple minutes, in the last few days, has NRC increased its focus on nuclear security?

Mr. {Jaczko.} We have kept a vigilant look at nuclear security, and as we get additional threat information, we will periodically communicate that as appropriate. But at this point, there is nothing immediately that has caused a significant change in the security posture for our facilities.

Mr. {Green.} Under our current system, NRC facilities are exempt from Homeland Security chemical facilities anti-terrorism standard or CFATS regulations, which establish high-risk based performance standards for security of high-risk chemical facilities. It is my understanding that the NRC and Homeland Security has entered into a memorandum of understanding regarding security of high-risk chemical facilities and high-risk chemicals at NRC-regulated facilities.

Can you explain what the memorandum of understanding says between NRC and Homeland Security?

Mr. {Jaczko.} Well, what that memorandum of understanding is for is that some facilities where there is dual authority, namely facilities that may have nuclear material and chemical hazards, that those facilities would be regulated under the NRC’s program. We are constantly working to make sure that that is capturing the spirit of the law that currently exists, which provided an exemption for

facilities that have nuclear material. So that memorandum of understanding is to make sure that we don’t have a loophole in coverage and protection for those facilities that have both nuclear and radiological material--I am sorry, chemical and radiological material.

Mr. {Green.} Okay, I have some concern the MOE goes beyond the authority and still allow CFATS exemptions for the entire facility. A good example is if a facility has a nuclear reaction and a high-risk chemical storage tank under the same site, under the current scheme, NRC is only required to regulate the reactor. Nevertheless, the entire facility including the storage tank is exempt from CFATS, leaving that high-risk chemical storage tank exposed to potential terrorism. The exemption issue is significant, and I hope we can close that gap to make sure the regulation--the issues with the chemical security markup. We have one this afternoon on extending that, but that is something that we need to consider in any information the NRC could get to us to make sure it is seamless on those facilities that are covered under CFATS even though there is an exemption would be appreciated.

Mr. {Jaczko.} We will certainly provide that, and we have been in discussion, I think, with the committees drafting that legislation to make sure that we achieve the

same goal that you are looking at, which is to make sure there is no gap in coverage between facilities like that.

Mr. {Green.} Okay. Thank you, Mr. Chair.

Mr. {Shimkus.} Gentleman yields back his time. Chair now recognizes the gentleman from Kentucky, Mr. Whitfield.

Mr. {Whitfield.} Thank you very much. I also would like to revisit the Yucca Mountain issue simply because of the money that has been involved in it and the ramifications that decision or nondecision has on our country. From the testimony that I heard from the three commissioners, all of you indicated that you, in your own mind, felt that you had issued a vote on whether or not to uphold the construction authorization’s board’s decision.

And it was also said that in order to have a final order at the agency, there had to be a commission order. So if the three of you, in your mind, voted on this issue, we know that one commissioner recused himself. So my question is if people have voted, who makes the decision that there be a commission order issued? Any of you can answer.

Mr. {Jaczko.} Well, Mr. Whitfield, that is generally the process that we usually follow. We have what is called an affirmation notice, which is an official notice that goes out indicating that we are ready to move to a session, to actually weigh in on this order. That is done by the

commission itself, and when we have an approval of that affirmation, that is usually when we proceed to go forward. And so that serves as the proxy to indicate that the commission itself has come to resolution and come to an agreement on an order and that we are willing to go forward.

But it is ultimately the commission that makes the decision about the order.

Mr. {Whitfield.} But from Mr. Shimkus's reading your testimony earlier, it would indicate that they feel like they voted on this issue, and from your perspective, they did not vote on this issue. Is that correct?

Mr. {Jaczko.} Again, I think as I tried to explain at the time, votes have been cast. Those votes are not the final action. Some of my colleagues have circulated compromise positions as part of the post-voting action to work to bring us to resolution. So I appreciate the views that my commissioners have expressed. However it does not mean that because we have all the votes cast that we are ready to move to an order, and at this point, we are not.

Mr. {Whitfield.} So are you the one that makes that decision?

Mr. {Jaczko.} I am not. The commission as a whole makes that decision.

Mr. {Whitfield.} But they said that they voted already.

Mr. {Jaczko.} That is correct, and that is different from the order that is the final action when it comes to these adjudicatory matters, which is what I explained to Mr. Shimkus. And I think as you hear Commissioner Ostendorff say, we are working to get a majority on that particular order.

Mr. {Whitfield.} During the events in Japan, Chairman Jaczko enunciated a policy that people living within 50 miles of the damaged reactors in Japan should evacuate. Now, that really created an uproar, I might say, not only in Japan and elsewhere, but also in the U.S. because I think we have a 10-mile evaluation area in the U.S.

So my question would be on an issue like that, did the commission vote on that, or was that just a unilateral decision that you made yourself?

Mr. {Jaczko.} That was a decision that was made based on a staff recommendation at a time when we were responding to an emergency situation in Japan. That action was fully consistent with existing U.S. standards for how we would deal with comparable situations. I moved forward with that decision and made that recommendation to the ambassador ultimately in Japan.

Mr. {Whitfield.} Okay, so that was your decision based on staff recommendation?

Mr. {Jaczko.} Absolutely.

Mr. {Whitfield.} Okay, now it is my understanding that the Energy Reorganization Act gives the chairman certain emergency powers at certain times. And it is also my understanding that that has never been--that that has been put into operation only once, and that was 9/11/2001.

Did you exercise emergency authority in the Japanese issue?

Mr. {Jaczko.} From the day that I became chairman, I have emergency authorities for all events that--all emergency situations that could occur that fall within the NRC's responsibility.

Mr. {Whitfield.} So there is not any mechanism that you have to go through to exercise that?

Mr. {Jaczko.} That is correct. We don't make a formal declaration. Now, the only time where there is an actual, I guess, some type of declaration is when I transfer those authorities to another commissioner. That is always done in a memo. Or to a member of the staff, whoever is receiving the authority. So we transfer that in a memo so that there is a clear indication of who has the authority. But the intent of the Energy Reorganization Plan was to ensure that the commission or the agency would make prompt decisions. And so all of those authorities of the commission were vested

in the chairman in an emergency situation so that you would not be taking time to try and determine is this an emergency situation or not, and what authorities, and who has what particular authorities.

Mr. {Whitfield.} And at the operation centers, do all of the commissioners have access to the operation center in the event of an emergency?

Mr. {Jaczko.} It depends on the situation, and ultimately the operation center is under the control of the chairman. And so ultimately I decide who has access to the center and what is appropriate for the situation.

Mr. {Shimkus.} Gentleman’s time has expired. Chair now recognizes the gentleman from Illinois, Mr. Rush, for 5 minutes.

Mr. {Rush.} Want to thank you, Mr. Chairman. Chairman Jaczko, during my tour of Dresden, I became concerned that there was a real possibility that the resident inspector who was really the local cop on the beat at these nuclear facilities, that they could very easily lose their ability to remain objective due to what I perceived as a certain coziness with their facility managers and the facility teams that they were responsible for overseeing.

What are the protocols for deploying resident inspectors? Where and how are they assigned geographically

and logistically, and how often do they rotate?

Mr. {Jaczko.} Nominally, our resident inspectors serve for about 7 years. Seven years is the max amount of time they are allowed to stay at any one site. We go through a competitive selection process. This is often a very competitive position within the agency, and some of our best and brightest individuals go on and become resident inspectors. And actually it is really a stepping stone to becoming one of the senior managers at the agency. We have many former resident inspectors who are ultimately some of the top managers at the agency. So we are very mindful of the concern that you are looking at.

Mr. {Rush.} So they are there for 7 years?

Mr. {Jaczko.} Seven years is the maximum.

Mr. {Rush.} So they move family and friends to the particular geographic location for the most part?

Mr. {Jaczko.} That is correct.

Mr. {Rush.} So they are going to church together, shop together, children play on the same team together. Do you have any fear that this kind of coziness over this long period of time might cloud their objectivity and their reliability and their integrity, you might add?

Mr. {Jaczko.} From what I have seen of the individuals that carry out this work, I have very little concern. They

are incredibly dedicated professionals, and they are, for lack of a better word, kind of a thorn in the side of the utilities. They investigate what they need to investigate. They don’t take any direction from the plant employees, other than information that might be helpful in an investigation or an inspection. They are very objective, but we do keep an eye on it to make sure. It is something we want to make sure doesn’t ever become a problem, and that is part of why we have that 7-year maximum, but we have had very little problems with our resident inspectors.

Mr. {Rush.} In that 7-year max, isn’t 7 years quite a length of time though? What is your rationale for the 7 years?

Mr. {Jaczko.} You know, it is a timeframe that has changed over time. Originally we had a much shorter timeframe, but it turned out that it was not actually terribly easy to rotate and replace these people on a shorter timeframe. So it is actually something that the GAO looked at many years ago.

And in fact, one of the things that the GAO recommended in a report was that we didn’t even need a timeframe, that what we needed was periodic visits of these resident inspectors back to the regional headquarters. So that is something that we actually implement. They get together for

a brief period of time every year at the regional headquarters so it takes them out of the plant so we have an opportunity just to kind of reinforce to them their responsibilities and their function.

So right now, the cap is there. It has developed over the years, and it has been lifted and gotten longer over time because we found that the objectivity is not a problem. But it is something we continue to look at, and we will make sure that it doesn’t become a problem.

Mr. {Rush.} Does the NRC have independent sensors or monitoring equipment at all of the U.S. facility--nuclear facilities, independent sensors? Do we have them at all the locations?

Mr. {Jaczko.} We do not have any particular sensors. Where we get our information is from the licensees. But we have unfettered access to any of the licensee information, and so we periodically audit and review information that they are providing about the status of the plants and material at the sites.

Mr. {Rush.} Yield back.

Mr. {Whitfield.} [Presiding] Gentleman from Texas, Mr. Barton, is recognized for 5 minutes.

Mr. {Barton.} Thank you, Mr. Chairman. I am confused. I am a simple guy. I try to read things black and white, but

I listened to the chairman's explanation to both Chairman Shimkus and Chairman Whitfield, and I don't understand it. So I want to try to clarify a few things.

I want to ask you, Commissioner Ostendorff, is it true that in March of last year, the DOE did file a motion with the NRC Construction Authorization Board to withdrawal the license application? Is that a true statement?

Mr. {Ostendorff.} Yes.

Mr. {Barton.} Okay, and is it also true that the commission directed the board to decide that motion by June of 2010, and on June the 29th, 2010, the board denied the DOE motion to withdrawal the application. Is that true?

Mr. {Ostendorff.} That is correct.

Mr. {Barton.} So, by law, the commission directed the board to decide on the motion to withdraw, and on June the 29th, the board denied the Department of Energy's motion to withdraw? The full commission has or has not had a vote on that motion to deny?

Mr. {Ostendorff.} Four or the five commissioners have voted on the ASLB, the Atomic Safety and Licensing Board decision. Commission Apostolakis was recused.

Mr. {Barton.} Okay, so there was a vote, one commissioner recused. The vote was two to two. Is that correct?

Mr. {Ostendorff.} Congressman, it would be inappropriate for me to comment on the outcome of the votes. I can tell you that--

Mr. {Barton.} I don’t want to know how anybody voted, but--well, let me ask you this. Was there a definite majority in this vote?

Mr. {Ostendorff.} There was an outcome of those four votes--

Mr. {Barton.} Well, it is either four-zero, three-one, two-two, one-three, or zero-four.

Mr. {Ostendorff.} Believe me, Congressman. I understand the frustration you are having in asking me this question. I am trying to stay consistent with our principles to not comment on matters that are subject of ongoing adjudications.

Mr. {Barton.} We are not asking how any commissioner voted. We know that the motion to withdraw was denied. Apparently we know that the commission voted on that board recommendation. What we don’t know is the outcome. Is that--

Mr. {Ostendorff.} That is correct.

Mr. {Barton.} The chairman, who is an honorable, decent man, who has been in my office a number of time and I have great admiration for, appears to me to be playing some sort

of a foot-dragging game--that is my characterization--because he thinks on June the 30th, he is going to apparently get a new commissioner that apparently agrees with his position and can then issue this order. Now, he is smiling as I say that, but, you know, I am a simple guy. But I wasn't born yesterday, Mr. Chairman, and that is what it appears to me.

So my question to you, Commissioner Ostendorff, how do we resolve this? I mean it appears to me that we are just playing a shell game. My understanding to issue an order is a mechanical exercise. You just direct the clerk to put some words on paper, and that is it. It is not a policy exercise. Am I wrong on that?

Mr. {Ostendorff.} Let me approach this, Congressman, if I may via a hypothetical. May I approach that might explain an analogous situation. As I mentioned earlier when I was questioned by your colleagues here, I voted August 26 on the DOE motion withdraw issue. My other colleagues at various times, they have indicated, have also voted on this matter. So four commissioners at this table have cast votes on this matter.

In order to get to--and the chairman was talking about this--in order to get to an order out of the commission, so we have our individual one, two, three, four votes. To get to an order that represents the commission's decision, it

requires three out of the four of us at this table to agree to common language that would go out on an order. That has not occurred as of yet.

I will tell you that my own personal perspective, I have advanced drafts of orders that I thought could appropriately bring this to closure back on November 5, again on January 18 of this year. I have not been successful in--

Mr. {Barton.} Well, how can you have a vote and it not be publically known what the vote is? When we vote, it is up on a big board, and then it is put into the congressional record. And, I mean, we don’t have the luxury of voting and then waiting two or three months or a year or two years before people know how we vote. I mean I don’t understand that. Is there some secret protocol at the NRC that gives you all the authority to vote and not admit to the public how you vote?

Mr. {Ostendorff.} The internal commission of procedures, which are our guidebook analogous the House rules and procedures that you operate with and your specific committee rules, those internal commission procedures govern how we conduct ourselves during adjudications and a whole host of other procedural matters.

And according to those procedures, it is a matter of getting an order out that represents the majority view of the

commission.

Mr. {Barton.} Well, my time has expired, and my chairman is a stickler for regular order. But this isn't going to go away. Chairman Upton said it. Mr. Shimkus is concerned. Mr. Whitfield, myself. I hope some of my friends on the Democratic side. Yucca Mountain is controversial, but it is not impossible.

Mr. {Whitfield.} Mr. Dingell, you are recognized for--the gentleman from Michigan, Mr. Dingell, is recognized for 5 minutes.

Mr. {Dingell.} Sir, I thank you for your courtesy. Members of the commission, welcome to the committee. We need to learn from events in Japan. That said, hysteria is both unwise and premature. Compare an ancient Japanese reactor built several decades ago to reactors to be built in the United States in the next decade is like comparing apples to oranges.

Nuclear power is 20 percent of our baseline and 7 percent of our local--rather, of our low-carbon power. If we are addressing climate change, we must move forward to a low-carbon future. And we need, above all, to take the approach that includes clean coal, CCS, nuclear, natural gas, and renewables.

I remain troubled about the standstill over long-term

repository for spent nuclear fuel. I am not here to blame you for this event. Other circumstances have brought that about. After more than 20 years or more, when we have collected $17 billion from rate payers for long-term storage of nuclear waste, DOE has requested that NRC withdraw its application for Yucca Mountain, and no funding has been requested this year for Yucca Mountain. This is, in my mind, extraordinarily irresponsible.

Now, my questions. Chairman Jaczko, do you intend to schedule a vote on DOE's request to withdraw its pending application to construct a repository at Yucca Mountain? Yes or no.

Mr. {Jaczko.} As soon as the commission has an order that it can move forward in, we will move forward with the order.

Mr. {Dingell.} Now if so, when will you do that?

Mr. {Jaczko.} As soon as we achieve the necessary conditions to have an order. I think as Commissioner Ostendorff indicated generally what those are, but again I don't want to go too much into the detail to preserve these adjudicatory processes being like a quasi-judicial process. We don't discuss publically what negotiations and discussions are.

Mr. {Dingell.} Thank you, Mr. Chairman. Also, Mr.

Chairman, it is my understanding that last June, the Atomic Safety and Licensing Board ruled that DOE did not have the authority to withdraw its license application. Is this true?

Mr. {Jaczko.} Yes.

Mr. {Dingell.} Why did they--why was that ruling made?

Mr. {Jaczko.} I can’t really comment on that specifically because that question is in front of the commission, and that is why we are looking to try and resolve.

Mr. {Dingell.} Thank you. Now, members of the commission, welcome to all. These questions to all of the commissioners. As I have mentioned, we have a lot to learn from events in Japan. It is important to review existing processes and procedures to identify lessons learned and to implement necessary improvement.

That said, the NRC staff has made significant progress on many of the combined license and design certification applications submitted to date. It appears that several applications are now in the final stages of review and could soon become a reality. Indicative of this progress is the recent final design approval of the ESBWR, the technology referenced in DTE Energy’s combined license application for FERMI 3 in Monroe, Michigan in my district.

In the past, NRC has projected the general intent to

complete the combined license and design certification process under part 52 in approximately 42 months. Is that so? Starting with you, Mr. Chairman, and then other members of the commission.

Mr. {Jaczko.} Yes.

Mr. {Dingell.} Yes? Our reporter doesn’t have a nod button, so we got to cooperate with him.

Mr. {Jaczko.} Yes.

Mr. {Dingell.} Ma’am?

Ms. {Svinicki.} Yes, that is correct.

Mr. {Dingell.} Sir?

Mr. {Magwood.} Yes, that is correct.

Mr. {Dingell.} Sir?

Mr. {Ostendorff.} Yes.

Mr. {Dingell.} Now, is there any reason to assume that that timetable might change, chairman?

Mr. {Jaczko.} Well, we certainly will continue to move forward with the activities on all of the new reactor licensing, but if we get additional information from Japan that requires us to make a change or to modify our process, we will--in my view, I believe we should do that. Certainly leave it up to the rest of the commission to answer for themselves.

Mr. {Dingell.} Thank you, Mr. Chairman.

Ms. {Svinicki.} I agree with Chairman Jaczko's answer.

Mr. {Dingell.} Sir?

Mr. {Magwood.} I generally agree with that answer as well. I guess I would also indicate that, you know, we are also evaluating a petition that has been filed by a variety of public groups that have asked the commission to consider delaying some of these applications. But, you know, we are still looking at that. We haven't made any decisions on it, but we have instructed the staff in the interim to continue moving forward with the work to that purpose.

Mr. {Dingell.} Thank you, Commissioner. Last commissioner please.

Mr. {Ostendorff.} Actually I have nothing to add to my colleagues. I agree with their comments.

Mr. {Dingell.} Thank you, ladies and gentlemen of the commission. I appreciate your courtesy. Thank you, Mr. Chairman.

Mr. {Whitfield.} Gentleman from Pennsylvania, Mr. Pitts, is recognized for 5 minutes.

Mr. {Pitts.} Thank you, Mr. Chairman. I would like to start out by thanking each of you for your testimony today. These are challenging times, and the work you are doing will play an important role in shaping our Nation's energy future.

There is no doubt that the incident in Japan has brought

into sharp focus the need for continuous assessment of our nation's nuclear power regulations. It would be unacceptable to have anything less than the highest standards for our nuclear power plants.

We also need regulations that work. Nuclear power supplies 20 percent of our nation's electricity needs. If we are going to get serious about clean energy and cutting off our dependence on foreign oil, we will need to maintain or increase this level of production over the next 20 years. So I implore you to work together to promote nuclear energy by making sure we have the best and safest nuclear plants, the most advanced nuclear technology and the safest and most effective way of storing spent fuel.

Now to my questions. Mr. Chairman Jaczko, while the public awaits NRC's important resolution of the DOE motion to withdraw the Yucca Mountain application, I understand that you directed the NRC staff to discontinue review work on the application and commence with an orderly close-down of the program. Is this correct?

Mr. {Jaczko.} It is correct.

Mr. {Pitts.} What does the orderly close-out entail?

Mr. {Jaczko.} The primary product of that will be what we refer to as a technical evaluation report, which is a document that will capture a significant portion of the

staff's technical review and the work that they have done on the application. It also involves activities to do knowledge capture, knowledge management, to ensure that we retain the expertise and the information from the staff who have worked on this project and make sure we have a good record of their efforts and their activities.

Mr. {Pitts.} I would like the other commissioners to respond. Do the other commissioners agree with the chairman's decision to close down the program? Commissioner Svinicki?

Ms. {Svinicki.} No, I publically disagreed with the decision and the direction issued by the chairman in October of last year to begin the orderly shutdown under the continuing resolution. I disagree with that position.

Mr. {Pitts.} Commissioner Magwood?

Mr. {Magwood.} I agree with the chairman's general position to begin planning to close out the program because of budgetary reasons. We simply didn't have the resources to continue going forward. However, I did not agree with all the details about what close-out meant, and that is still something, I think, is under some discussion.

Mr. {Pitts.} Commissioner Ostendorff?

Mr. {Ostendorff.} Congressman, I strongly disagree with this direction. I took actions in accordance with our

procedures to issue what is called a COM, a commission memorandum document, on October 6 of 2010. That document requested my colleagues on the commission to take a different direction here, to allow the staff to continue to work on the licensing activities until there has been a final determination and a legal decision to terminate Yucca Mountain. So I disagreed then. I still disagree today.

Mr. {Pitts.} Has the commission voted on this issue, Mr. Chairman--

Mr. {Jaczko.} On the question of--

Mr. {Pitts.} --on the closedown?

Mr. {Jaczko.} Yes, it was in reference to Commissioner Ostendorff’s communication. It was not approved by the commission.

Mr. {Pitts.} I would like to ask the other commissioners to respond.

Ms. {Svinicki.} I voted to approve Commissioner Ostendorff’s proposal to reverse the chairman’s direction to shut down the program.

Mr. {Pitts.} Commissioner Magwood?

Mr. {Magwood.} I decided not to participate in that particular vote.

Mr. {Pitts.} Did you vote? Did you say you voted?

Mr. {Magwood.} I did not participate in that vote.

Mr. {Jaczko.} I don’t want you to get too bogged down in the procedural niceties here, but from a practical matter, the commission on their vote sheets, they have four options. They can approve, they can disapprove, they can not participate, or they can abstain.

So each of those is the options that the commissioners have. This particular vote, there were two--there was Commissioner Ostendorff’s approval, Commissioner Svinicki’s support of that, and then the remaining three commissioners did not participate. The end effect was then a notice to Commissioner Ostendorff indicating that his proposal was not approved by the commission.

Mr. {Ostendorff.} I would like to add, Congressman, a comment there just one. My own interpretation is that--and I think the chairman has the various options--but not participating, from my standpoint, in the vote is not the same thing as saying you disagree with the decision that I was advancing in my document. So this is just my personal viewpoint that I wanted to add to your--to clarify.

Mr. {Pitts.} Now, Mr. Ostendorff, you released a memorandum in October in which you disagreed with the chairman’s budget guidance. What was the main point of the disagreement?

Mr. {Ostendorff.} Congressman, I strongly disagree with

the guidance, and I told the chairman that up front. I have worked here in the House of Representative as a staff, subcommittee staff director and counsel dealing with continuing resolution matters. I have been a senior official at the Department of Energy where I ran the budget process at the security administration. So I have had significant experience dealing with CRs for many years in different jobs I have had.

My experience with the CR is that, unless the new language clearly calls out for some special treatment of a program, that the prior year appropriation upon which the CR is based provides the guidance to agencies as to how to move forward. The fiscal year 2010 budget for the NRC had the high-level waste program conducting licensing activities. In the absence of some congressional direction to change that, I do not believe that that needed to be or should be changed.

I also believe that the conditions that were put forth officially to Congress in the fiscal year 2011 budget submittal--the budget had not been approved at that time--the budget submittal that came from our agency through ONB to Congress for fiscal year 2011 said that upon suspension or withdrawal of the Yucca Mountain license application, then the NRC would commence to shut down operations. Neither of those two conditions was met.

Mr. {Pitts.} Thank you. My time has expired.

Mr. {Whitfield.} The gentlelady from California, Ms. Capps, is recognized for 5 minutes.

Mrs. {Capps.} Thank you, Mr. Chairman. Chairman Jaczko, thank you to you and to all the commissioners for appearing for this hearing today. Chairman, it has been over a month since I requested the NRC to stay the license renewal application for Diablo Canyon and to work with California oversight experts to review new seismic information and mapping. Can you explain why the NRC has not answered my request?

Mr. {Jaczko.} We currently have in front of the commission a broad request in these formal licensing hearings for the commission to take an action similar to the action that you have requested. The commission is working on--

Mrs. {Capps.} When--excuse me. When could I and my constituents expect an answer to my letter?

Mr. {Jaczko.} The commission to try and get this issue resolved, but I would expect it is going to be at least a month before we will have some resolution on that broader question of the hearing process. But we certainly have it in front of us, and we are working to give you a good answer--

Mrs. {Capps.} Thank you.

Mr. {Jaczko.} --as soon as we have it.

Mrs. {Capps.} I wanted to ask you about the current relicensing process. It is focused entirely, it is my understanding, on identifying and managing the detrimental effects of aging plants and facilities, not on reevaluating the threats that form the basis of the plant's original design. Am I correct?

Mr. {Jaczko.} That is correct.

Mrs. {Capps.} Now, our understanding of seismic threats has improved dramatically since most nuclear power plants were originally designed and licensed 30 or more years ago. And on top of that, we are now tragically learning lessons from Japan. The one thing we have learned loud and clear is that seismic issues must be thoroughly examined and incorporated in all design, construction, and operating phases of nuclear power.

I appreciate that the NRC continuously reviews threats, but, as you know, in California, researchers have found new flaws close to Diablo Canyon. And it would follow that based on what--that plus what happened in Japan, that this information should be considered in the relicensing process just as it would be in the licensing of a new nuclear power plant. And I remind you of the history of the nuclear plant at Diablo Canyon when, as they originally were building it, they discovered the Hosgri Fault offshore. Had to stop,

redesign it to the cost of billions of dollars to rate payers, and adjust it based on that new discovery.

So my question, does the NRC have plans to examine seismic hazards of nuclear power plants design basis within the scope of their relicensing process?

Mr. {Jaczko.} Well, the--currently, as you indicated, the relicensing process is focused on the aging management programs. If there ever were to develop information about new seismic information, much as has occurred with Diablo Canyon with the shoreline fault, we take that information and we process that immediately. And we are currently reviewing the analysis that has been done by P. Genie with regard to the shoreline fault.

So we don’t wait for the relicensing for that action to be taken.

Mrs. {Capps.} Well, for example, last month, the NRC’s region four staff was asked by the California legislature if they would withhold releasing their environmental impact report for license renewal at Diablo Canyon, and the answer was no. The fact is that my constituents want the NRC to immediately stay the license renewal application for Diablo Canyon. They want you to work with experts within my state to update seismic data and mapping for a reactor site that lies within 5 kilometers of four active earthquake faults.

We have time. This relicensing is not due until 2025, and I want it entered into the record, if I may ask, the response of the USGS to the California Energy Commission when they inquired as to the state of seismic research. And I want to quote one sentence here. ``Given our current''--this is USGS. ``Given our current state of knowledge, we cannot rule out the possibility of a rupture on the shoreline fault, triggering a rupture on the Hosgri Fault or vice versa.''

In my opinion, this begs for the use of 3D high-resolution studies to be done. And even though P. Genie says they are doing them, they are not asking for a stay in the process. They want this to continue.

The bottom line is for the confidence of my constituents, and I believe for the American people, and the fact that we do want clean energy that nuclear power can give us--I am not asking for a shutdown of the facility. But these questions could be answered before the relicensing is proceeding any further because the situation in Japan looms so large on my conscience. And that we have a responsibility in the federal government to make sure that there is confidence, that the kind of energy we are seeking from nuclear facilities can be done so in an extremely safe manner.

I don’t want us to look back on some, God forbid,

horrific situation at either San Onofre or Diablo Canyon and say we had time. I can only imagine what the Japanese people are saying now following that tragedy, and we have an opportunity to use the latest--I am sorry you are having to hear my strong feelings here--that the desire of my constituents and, I believe, the American people, to have the latest of technology, 3D studies, done by an independent third party has every right to be fully examined before the licensing process is pushed any further.

That was the substance of my letter to you, and I am using this time now to underscore the importance of that for, I believe, for our energy policy in this country, but certainly for my constituents. And I yield back.

Mr. {Shimkus.} Gentlelady yields back, but I want to get confirmation. Do you want that letter submitted? Can we look at it? I am sure we will, but we want to make sure. We haven’t seen it yet, so we will take a look at it. And then we will--and now the chair recognizes Mr. Terry for 5 minutes.

Mr. {Terry.} Thank you, Mr. Chairman. Before I get to my question, I just want to express an observation here in that--or a conclusion that I am very disturbed at this commission. I think we have now found the most secretive agency or commission on Capitol Hill. I used to think it was

the Federal Reserve, but I think you guys take it.

The level of noninformation from this panel is frustrating. Circular discussion and just, in normal human nature, when there is a void of information, it is filled with some information, which leads to conclusions, maybe true or misplaced, that perhaps this is a politically-run organization now.

And certainly when we hear of whether or not there is votes or no votes or statements and state of approval or nonapproval, and you get to say I don’t vote, but yet that counts for a vote in the chairman’s mind is very disturbing. And so one of the recommendations I would make, Mr. Chairman, is that perhaps we need to legislate transparency into this organization.

And I am disturbed or concerned that some of my colleagues on the other side of the aisle here seems to want to just ask non-related questions to the apparent dysfunction of this commission and its commissioner or its chairman. But help me clarify because I think this is a key component here. On the high-level waste program, I want to know when was the policy to begin the closeout of the high-level waste program established at the NRC.

And, Ms. Svinicki, when was that established?

Ms. {Svinicki.} I do note that the commission

established a policy of shutting down the Yucca Mountain program. This gets to the interpretation of nonparticipating as an affirmative act, meaning that it establishes--it establishes an outcome certainly, but I don’t believe that having a majority of the commission not participate in a policy proposal results in establishing a new--

Mr. {Terry.} Which is an interesting procedure that, whether it is a tie or three to one or one to three, we will never know. Then somehow gives carte blanche power to the chairman to proceed as he or she wants to. Mr. Magwood, would you agree with Ms. Svinicki’s statement that there was no establishment of a close-down policy?

Mr. {Magwood.} I don’t think that the commission has taken an active decision to close down the program. I do think--

Mr. {Terry.} But the chairman has.

Mr. {Magwood.} The chairman clearly set a direction towards close down, and as I indicated--

Mr. {Terry.} Mr. Ostendorff--I am sorry to cut you off, Mr. Magwood. I just looked up and saw I only have a minute, 14 left and two other questions. Mr. Ostendorff, do you feel that this policy of close down has been established?

Mr. {Ostendorff.} I was informed verbally by the chairman on October 1 of the intent to provide the direction

that he has described, to shut down the licensing activities. My document here I am reading from is my COM issued October 6, which I tried to convince my colleagues during the pendency of the contending resolution, the staff should continue to follow the schedule to complete safety evaluation documents for Yucca Mountain.

Mr. {Terry.} All right, my 40 seconds left, Chairman Jaczko. When was the policy to begin closeout of the high-level waste program established, how was it communicated to your fellow commissioners and to the public, what are the documents, are there transcripts of the votes, and what lead you to this decision to close out? And you have 8 seconds.

Mr. {Jaczko.} Did I use them up? I--the decision ultimately was in a memo. Well, really the first indication was when DOE indicated their withdrawal of the application, I believe, which is in March of--I am going to get my years wrong--2010, I believe. There was a memo that was circulated to the commission indicating that based on the fact that the application was being withdrawn, that the staff would be moving into closeout. At the beginning of the fiscal year, 2011 fiscal year, a memo was issued from our executive director of operations, who is essentially the chief operating officer, and the CFO, indicating that the staff should effectively begin close-down of the program.

As Commissioner Ostendorff indicated, he then--and I was comfortable with that decision in my executive authority as chairman of the agency. I was comfortable in that decision and moving forward in that way. Commissioner Ostendorff then, as is his right, made an argument that that was, in fact, a policy issue that should have been considered by the commission. The commission did not support that. So the policy decision ultimately was made with the memo that had my concurrence issued in early October. I think you have a copy of that. We can get you a copy of that exact memo.

Mr. {Terry.} Yield back.

Mr. {Shimkus.} We are policymakers. We don’t make decisions based upon memos. I would like to recognize Diana DeGette for 5 minutes.

Ms. {DeGette.} Thank you very much, Mr. Chairman. Chairman Jaczko, I wanted to talk to you for a minute about a concern that you know that I have, which is what are we going to do with the nuclear waste that we have sitting around at all of the sites around the country? Spent fuel was an issue at Fukushima when they were trying to control the emissions. And I am wondering about what our long-term plans are in this country for it.

As I understand it, we have about 63,000 metric tons of spent fuel, including both dry cask storage and the spent

fuel pulls. Is that correct to your knowledge?

Mr. {Jaczko.} About that number, yes.

Ms. {DeGette.} And how many years has that built up over?

Mr. {Jaczko.} Well, we have some facilities that have been operating for over 40 years. So some of that fuel goes back that far.

Ms. {DeGette.} So it is built up over the period of about 40 years. And as I understand it, even if we did certify Yucca Mountain, that facility, at least according to the original plan, was statutorily limited to 70,000 metric tons, correct?

Mr. {Jaczko.} I believe that is the correct sum.

Ms. {DeGette.} So with 63,000 metric tons sitting around right now and 70,000 tons, even if we did certify Yucca, that really wouldn’t address the long-term problem if we are going to develop more nuclear power in this country about what do we do about the waste problem, correct?

Mr. {Jaczko.} Yes, there certainly would be a shortage of storage capacity even with that.

Ms. {DeGette.} Right, so my question is, I guess, what is the commission doing, as we think about developing nuclear power in the future, aside from all the safety issues and the certification and all of that? I mean whether or not you

assume that we are going to reopen the whole discussion about Yucca, what is the commission doing about planning for long-term storage issues around spent fuel?

Mr. {Jaczko.} Well, first and foremost, our focus is to make sure that the fuel can be stored safely and securely, and right now, we believe that it can be. The commission recently made a policy decision about our belief that certainly for at least 60 years beyond the licensed operation of a facility, that the spent fuel can be made, stored safely and securely in a combination of wet or dry storage.

In addition to that, we have asked the staff of the agency to look at a longer term timeframe, maybe 200, 300, 400 years to make sure that there are no real substantive problems with the safety and security of that fuel over that period of time.

And in addition then, there are efforts ongoing. There is a blue-ribbon commission that the commission is not directly involved in, that the secretary of energy convened, to really answer that much, much longer timeframe question about what are the best ways to deal with this fuel? Whether it needs to be reprocessed, whether it can be put into a geologic repository, or other some type of other approach for reprocessing or recycling.

Ms. {DeGette.} So I guess my view would be that I think

it is important, if we are really going to look at development of nuclear energy, not just to say well, we think that we can safely store the spent fuel on site the way we are now. We can just kick that can down the road for 60 or 100 or 200 years.

My view would be, as we start to think about whether nuclear power really is a viable, either a bridge fuel or a long-term fuel, that we are really going to have to have some clear idea of what we are going to do. And if that would require some appropriations or efforts from Congress, I think that is something to do. I think just saying well, you know, would it be safe for us to leave all this spent fuel sitting on site for 200 years? I don’t think that is the discussion we should be having. I think we really need to grapple with what we are going to do. And, Mr. Chairman, I guess that is all I have to say, and I yield back.

Mr. {Shimkus.} Gentlelady yields back. For my colleague from California, we looked at the letter, and we will accept it under unanimous consent. So ordered.

[The information follows:]

********** COMMITTEE INSERT **********

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Mr. {Shimkus.} Now the chair recognizes my colleague from Ohio, Mr. Latta, for 5 minutes.

Mr. {Latta.} I thank the chairman, and I thank the commissioners for being with us today. And I too have got some questions as to how things proceed at the commission. Can I ask you right off the bat, when you are voting, is that something under regulations or under statute as to how you proceed? Ms. Svinicki? I am sorry.

Ms. {Svinicki.} Yes, the statute, I believe, references that the commission will develop policies and procedures for how it conducts its business.

Mr. {Latta.} Okay, thank you. And Commissioner Ostendorff, can I ask you how would you define collegial voting process?

Mr. {Ostendorff.} I would say that that describes an environment where each individual can study an issue, can engage their colleagues. We typically meet one on one with each other every week governed by the government in the Sunshine Act requirements, and we can exchange our views and positions in informal meetings, and then proceed to cast a vote. This is a formal written notation vote under our procedures. And that becomes our position on a matter. Then those votes are used to hopefully come to a majority

position. The commission can announce, in the case of an adjudication, as the results of an order.

Mr. {Latta.} Okay, if I could ask Commissioner Magwood. You had said a little bit earlier, and I hope I got this correct. You said on some occasions you are not getting the information, but the majority of the time you are. And you just heard from your fellow commissioner that you get time to study the issue and exchange views and get the information. But if you are not getting the information, how can you exchange views properly and make a proper decision?

Mr. {Magwood.} Well, in the case of matters where we have a vote, I don’t think there has ever been a case where I have been unable to get information to support my ability to render a judgment.

Mr. {Latta.} Okay, and, Commissioner Svinicki, you said that there has been times, if I wrote this down properly, you said that there have been--it has been pushed back and not being ready. Could you explain that a little bit when you are getting, like you are getting all the information before you have to make a decision? You say you are getting some push back?

Ms. {Svinicki.} Yes, policy matters come before the commission for its deliberation and voting as a number of ways. As we have heard, commissioners can themselves propose

a policy matter to be voted on, but the agency staff can also develop policy issues and bring them forward to the commission. When I indicated that there is occasionally issues of ripeness or when an issue is ready to be brought to the commission, that was the push back that I referred to is if it is an issue arising from the agency staff being brought to the commission for the deliberation, it may occasionally be--there may be timing issues.

Mr. {Latta.} Okay, and I wanted to make sure I understood this. Commissioner Magwood, when Mr. Pitts was asking some questions, you said that dealing with what the word closeout meant, and you had a problem with that. Could you explain that, something in regards to what closeout meant?

Mr. {Magwood.} When the issue of closing out the program first came up in the context of the convening resolution, it was clear that the language of the previous year’s appropriation did not clearly authorize closeout of the program. But it seemed to me at the time that the fact that we had such limited resources, that it was a--as a person who has managed government programs, it was in my view a reasonable choice to begin planning to go towards a position where the program would be out of money by the end of the fiscal year, and then we would have to be ready for

that.

Mr. {Latta.} Okay, and then again this is for all commissioners, Svinicki, Magwood, and Ostendorff. On page 12 of the chairman's testimony today notes that the 2011 appropriations bill provides $10 million for the NRC staff to complete the effort to thoroughly document the staff's technical review and preserve it as appropriate for publication and public use.

Are we to interpret that statement from the chairman to mean that the Appropriation Committee earmarked the $10 million to mothball the Yucca license review? Commissioner Ostendorff?

Ms. {Svinicki.} I do not interpret the Congress's action on the funding bill to have directed the NRC to shut down the program.

Mr. {Latta.} Commissioner Magwood?

Mr. {Magwood.} I think that the process to decide exactly what we mean by shutdown is a decision the commission has to make, and I have offered a COM to the commission to try to move towards deciding that, but we haven't resolved that.

Mr. {Latta.} Thank you. Commissioner Ostendorff?

Mr. {Ostendorff.} I agree with Commissioner Svinicki's comment.

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

Mr. {Shimkus.} Gentleman yields back his time. Chair now recognizes my colleague from Georgia right next to me, Mr. Barrow, for 5 minutes.

Mr. {Barrow.} I thank the chairman. Members of the commission, I represent Georgia's 12th District, which is the home of Plan Vogtle. Vogtle was, as you may know, the last nuclear power plant to be commissioned in this country over a quarter of a century ago, and it just happens to be the site of the next nuclear power plants to be commissioned in this country as a result of many, many things going on right as we speak.

Policy makers at both the state and the federal level had a huge role to play in this. At the state level, legislators given the owner/operator the permission to start charging rate payers long in advance without getting any return on their investment. So Georgia rate payers are already paying for the construction cost in order to lower the amount of borrowing that has to be done to build the thing.

At the federal level, the last administration signed into law and this administration is implementing for the first time loan guarantees to reduce the cost of the

borrowing that does have to take place. So at the both the state and the federal level, the rate payers, the policy makers at both levels doing everything they can to re-inaugurate or re-jump start the nuclear renaissance in this country that is going on right now. And we have gotten just about as far down the road as you can with preparation before we have to start building the thing itself.

And I want to commend you all, commend you and your staff for the role that you all have been playing in this because it is a major development. I think the folks I represent recognize that Vogtle is a unique and really valuable asset, and they are proud about its prospects. And I want to commend you all for what has happened thus far.

What I want to ask about is--and I know we are concerned about learning the lessons from the events in Japan. The question I have for you all is what can the folks who are developing the new sales at Vogtle expect as a result of the review of the events in Japan? Mr. Chairman, can you elaborate on that?

Mr. {Jaczko.} Well, we have--there are really two stages to the review. The first stage is a 90-day review. That is about a month into that review. So in about another 60 days, we will have some preliminary information about possible changes we would need to make to our regulations.

If there were changes that were necessary, those would fall into really one of two categories. Changes that are fundamental to safety and changes that are really more enhancements to safety.

If they are fundamental change to safety, then all plants would really have to look at those without regard to cost or other considerations. If they are factors that involve kind of enhancements to safety, then they would fall under our provisions that require us to do essentially a cost/benefit justification for making those changes.

So a perspective license application would potentially fall under one of those two categories, but the goal is to try and get all the work done before we have to make any final decisions on these new licenses. But certainly that will be--it will be a challenge to get there, but I think we have some good people working on it. And I think they understand the importance of identifying what the lessons are, identifying them early, and then laying out what the changes are that might be necessary.

So we will continue to communicate very well, I think, with all of our applicants about possible changes and keep them informed as we go forward.

Mr. {Barrow.} Anybody else on the commission wish to elaborate? All I will add is--thank for the explanation--is

just to understand that they are actually building the thing. Huge investments have been made. Commitments have been made. The rate payers are already paying for something. They haven't got a return on their investment yet, and the state and the federal governments have both combined and cooperated to try and make this possible. So I urge you all to approach this review in the most constructive manner possible.

You decide what is best, and I understand that is where we are. And I want to again commend you all and your staff for the work that you all have done thus far. And with that, Mr. Chairman, I yield back.

Mr. {Shimkus.} Gentleman yields back his time. Chair now recognizes the gentleman from Texas, Dr. Burgess, for 5 minutes.

Dr. {Burgess.} And I thank the chairman for the recognition. My apologies for being out of the room on some of these questions. So if I am covering ground that has already been covered, bear with me. That is what the committee process is all about.

Chairman Jaczko and any of the other commissioners who wishes to answer, on the budget approved by the commission, the 2011 budget approved by the commission in February 2010 appeared to set conditions for ending review of the Yucca application. Is that an accurate read of the budgetary

document?

Mr. {Jaczko.} The 2012 budget has zero funding for the Yucca Mountain review.

Dr. {Burgess.} But what about for the year 2011?

Mr. {Jaczko.} For 2011, the appropriation approved by Congress was for $10 million, which is for closeout of the review.

Dr. {Burgess.} And the Department of Energy has made a motion to withdrawal the license, but that motion was denied by the Nuclear Regulatory Commission. Is that correct?

Mr. {Jaczko.} A licensing board at the NRC denied that motion. The commission as a whole has not rendered a final action, but I would note that those actions are separate from the budgetary decisions. The budgetary decision goes to our review and ultimately our general activities. So it is possible for the agency to close out the review with the legal question of withdrawal still outstanding.

In essence, it would be mothballed and all the documents would be frozen in time, as they are. That legal question would be frozen in time, but from a practical matter, there really isn’t that much of a difference, I think, because the Department of Energy has no funding. The program has been terminated at the Department of Energy at this time, and it has been terminated now for over a year.

Dr. {Burgess.} Yeah, and I will just share with you, having been there with Chairman Shimkus last week, I mean I was shocked by the lack of activity, the inactivity after such a sizable investment. As Mr. Barrow has indicated, the rate payers have invested this money. And again I was shocked by what I saw. But at this point, the application has not been withdrawn. Is that correct?

Mr. {Jaczko.} It is still--the application is still in front of the commission, and the question of withdrawal is in front of the commission. But again from a budgetary perspective, we are closing out our review and intend to close out by the end of this year.

Dr. {Burgess.} Well, have the policy conditions been met to begin the termination?

Mr. {Jaczko.} We have received a congressional appropriation for $10 million which is to close out the program. The issues about the policy conditions again, we--I have perhaps answered this question many times in front of this committee. We have reviewed all of the questions and all of the issues that have been raised by my colleagues here, and those were ultimately reviewed by the commission in Commissioner Ostendorff’s communication about whether or not this was the appropriate action for the commission to take.

And I would note that Commissioner Ostendorff, in a

meeting that we had in October in front of the entire NRC staff, indicated that he had disagreed with the decision. That decision was looked at by the commission, and he ultimately respected that the majority of his colleagues did not agree with his interpretation. So that issue was put to rest in October of that year.

Dr. {Burgess.} Well, just so I am clear on this, the budget guidance issued by the Nuclear Regulatory Commission in February 2010 says ``upon withdrawal or suspension of the licensing review, the NRC would begin an orderly closure of the technical review and adjudicatory activities.''

Now, Ms. Svinicki, if I could ask you, you were on the commission when this budget language was debated. Is that correct?

Ms. {Svinicki.} Yes, I was part of the three-member commission at that time that voted on the budget request that you have just quoted.

Dr. {Burgess.} And why was that language included in the budget document?

Ms. {Svinicki.} If I am remembering events correctly, there might have been language in the draft budget request that I was voting on that had said something about assuming the withdrawal of the application. I had in my vote on that budget request language revised--proposed to revise that

language to upon the withdrawal or suspension instead of assuming the withdrawal or suspension. And that garnered majority support, and that is why it reads as you have just quoted it.

Dr. {Burgess.} So the language then is not an accident. It was actually voted on by the Nuclear Regulatory Commission?

Ms. {Svinicki.} Yes.

Dr. {Burgess.} Commissioner Ostendorff, the question I previously posed to Chairman Jaczko on the guidance issue in February 2010, do you have--and you were a dissenting opinion on that?

Mr. {Ostendorff.} I was not--Congressman, I was not on the commission in February 2010. I assume duties April 1, 2010, so I was not involved in the decision process that Commissioner Svinicki nor Chairman Jaczko were at that time.

Dr. {Burgess.} Right, but Chairman Jaczko referenced a debate that was voted in October.

Mr. {Ostendorff.} Yes, the chairman has accurately stated the situation from October of last year where an all-hands meeting in Rockville with NRC staff. There was probably 1,500 people there. We had acknowledged that--I disagreed with the chairman’s approach in this, but we had--I respected also that my colleagues on the commission had made

a different decision.

Mr. {Shimkus.} Gentleman's time has expired. Chair recognizes the gentleman from Washington State, Mr. Inslee, for 5 minutes.

Mr. {Inslee.} Thank you. We have great concern in the state of Washington. We are spending millions plus vitrifying waste that has been left over from us winning the Cold War and helping the country in that regard. And now we are vitrifying this waste, and it is all dressed up with no place to go.

And it is accumulating, and we are ready to go. And we are doing our job in the state of Washington, but we are stuck in this situation where Uncle Sam is not fulfilling its statutory obligation to open up this repository, and it causes us great concern in the state of Washington, both from the standpoint of efficiency that we are doing this great work vitrifying the waste, and from the standpoint that we have these hundreds, over 100 now what are supposed to be temporary sites. This is of great concern to us.

So I just want to ask the chairman my understanding is that the NRC staff was reviewing the Yucca Mountain application using 2010 funds. It was heading in that direction, and then without contrary direction from Congress, when the stop-gap CR came in to the 2011, it basically

reversed course without statutory authority. Is that, in fact, what happened here?

Mr. {Jaczko.} No, I don’t believe that it what happened.

Mr. {Inslee.} And why do you think it was a different situation?

Mr. {Jaczko.} At the beginning of the 2011 fiscal year, we were operating under a continuing resolution. We had had an application for the Yucca Mountain project that had been withdrawn. At the beginning of that fiscal year as well, the program had been terminated by the Department of Energy so there is no longer a Yucca Mountain program.

So at that time, what I did was look at general practices for appropriations law for dealing with a continuing resolution and made a decision to move to close down of the program. That was based on the fact that partially at that time, the Senate had approved a reduction in the budget for the NRC and the House as well.

There had been, at I believe a subcommittee level, there had been a mark to indicate a reduction in the budget for close out. And based on guidance from circulary 11 from the OMB as well as GAO guidance, the appropriate and prudent action at that point was for us to move to close down activities to preserve that option for Congress, which

ultimately is what Congress wound up approving, which was a dramatic reduction in our budget to $10 million while zeroing out the program at the Department of Energy.

So based on all of that, I am confident we took the right steps so that we are prepared to complete our action for closing out the program by the end of this fiscal year.

Mr. {Inslee.} So I would like to put in the record a memorandum dated October 8 from Commissioner Ostendorff, which basically says ``I believe that it is inconsistent with the intent of the continuing resolution to direct the staff to follow direction in the budget request for fiscal year 2011. My conclusion comes not only from a plain reading of the continuing resolution and applicable guidance, but also from my past experience as principle deputy administrator NNSA and its counsel for the Hearts Armed Services Committee.''

Now, to me, the only reading I can have of this scenario is that there was a decision made here politically without statutory guidance. And that is most concerning. Commissioner, would you like to comment on this?

Mr. {Ostendorff.} Congressman, you have my memo there. We have already discussed in the hearing, but just to summarize, I had, at that point in time, very strong beliefs that the position that I had advocated in my memo was the

correct position that the commission should take. I disagreed with the direction provided to the staff and used the COM vehicle, this memorandum, as hopefully the advocacy document to get my colleagues on the commission to agree with my position, which is that the staff should continue high-level waste licensing activities until there has been a withdrawal of the license application decision or until there has been a decision to suspend those activities.

I was unsuccessful in getting a majority of my colleagues to agree to that position.

Mr. {Inslee.} Now, the situation is that the Atomic Safety and Licensing Board is an independent, trial-level, adjudicatory body. They have issued a ruling that the DOE cannot withdraw the application. On what grounds can your organization ignore that clear adjudicatory ruling that stands as of this moment? I just--it just boggles my mind to think that they can just be ignored in this regard.

Mr. {Jaczko.} Congressman, the commission has not yet acted on that particular matter. The budget issues are a separate matter. We will be done with close out by the end of this fiscal year. At that time, if those legal questions are unresolved, they are unresolved.

But I would just remind you there is no program at the Department of Energy anymore for high-level waste. That

program and that office were terminated almost two years ago now. There is no longer any Yucca Mountain program. So, you know, I think that this is the best analogy is a developer wanting to build a shopping mall and the fire marshal conducting inspections and reviewing fire safety for that particular shopping mall and the developer deciding, after two years, to stop work and stop developing the project. The fire marshal doesn’t still go out and tell the developer to keep building so they can conduct their licensing inspections. That is the scenario that we have.

We are not in charge of the Yucca Mountain program. That is a Department of Energy program. It has been terminated. It ultimately would be a tremendous waste of taxpayer dollars to continue to review an application for which there is no applicant, and that is the situation we find ourselves in from a budgetary standpoint.

Mr. {Inslee.} I would just point out that I don’t think it is the private citizen’s right to tell the fire marshal what they are doing. That is the metaphor I would suggest. Thank you.

Mr. {Shimkus.} Gentleman’s time has expired. Chair recognizes the gentleman from Louisiana, Mr. Cassidy, for 5 minutes.

Dr. {Cassidy.} Thank you. Ms. Svinicki, I am sorry if

I mispronounce your name. Won’t be the first time, I am sure, for you. I have been here 3 years, and when you said something earlier, way earlier, I asked a question--it is like you were asked how much you know, and you replied somehow that no, you are really being asked what you don’t know that you know. It suggested a lack of forthrightness on behalf of the staff. If you ask a question, they answer you directly, but they are not necessarily generous and contextual with the answer. Is that--was that a fair characterization of what you said?

Ms. {Svinicki.} I would characterize the NRC staff has an inclination to be forthcoming to every member of the commission. I think that what they have to do is adjudicate issues of rightness and when it is that they would bring matters before the commission. If they desire to do additional work, they may suggest to me as an individual member of the commission that the matter is not ripe for me, for my review at that time.

Dr. {Cassidy.} When you say desire to do individual work, what do you mean by a desire to do individual work? Like this is an interest that is a personal interest on their part or an interest of the commission or of the chairman? Or do you follow what I am saying? I am not quite sure I know what you mean by a desire.

Ms. {Svinicki.} Desire on my part would be an issue in which I have developed some interest as an individual member of the commission. It is not perhaps before the commission as a body but in pursuing oversight of the staff's work, I may develop a personal interest in some area that they are working on.

Dr. {Cassidy.} I am sorry. You mentioned their desire though. How would their desire impact your activities?

Ms. {Svinicki.} Perhaps desire is a poor choice of words. It may be their evaluation that they should do additional work on a matter before it comes to the commission. It may be their expert judgment that there is additional work that they need to do prior to the commission considering it.

Dr. {Cassidy.} So you have no problem with how the staff deals with your issues?

Ms. {Svinicki.} My experience is that the staff is almost uniformly inclined to keep the commission fully and currently informed.

Dr. {Cassidy.} Okay, that is wonderful. Now, there is also a letter that, I gather, that when Chairman Isa and another committee requested the volume three of the draft Safety Evaluation Report of the Yucca Mountain license application. Four of you signed a letter, and it is a little

cryptic. But I am told that reading between the lines, it suggests that the chairman had not sent the full report. Or, put it this way, that you wished to weigh in that there may be a problem with the report as sent. I think this is already in the record. I can give it to you if you wish.

Mr. {Shimkus.} If you are asking for it, we will look at it as we do all--

Dr. {Cassidy.} No, I am just--

Mr. {Shimkus.} Let me just say that as a factual matter, I transmitted that report to Congressman Isa. The particular--

Dr. {Cassidy.} Can I ask the other--excuse me, Mr. Chairman, but can I ask the folks that signed this what was the purpose of the letter? Mr. Magwood, I just don’t--I don’t understand it.

Mr. {Magwood.} The commissioner has a process to formally approve correspondence to Congress and the correspondence generally. And the commission had come to some agreement on what the transmitting letter would say, and the letter that was purposed to be sent was different from what we had agreed to.

Dr. {Cassidy.} So the commission decided upon the content of a letter, but the chairman sent a different letter?

Mr. {Magwood.} That is correct.

Dr. {Cassidy.} Wow, now--wow.

Mr. {Jaczko.} Congressman, if I could just add, the--

Dr. {Cassidy.} Yeah, let me finish with these folks because you are very opaque when you speak, Mr. Chairman. But frankly, I am getting the sense of a group of folks who don’t find a collegial atmosphere, but rather find--in fact, I noticed that you quoted earlier, you used the personal pronoun I decided regarding the budget. And then we issued--

Mr. {Jaczko.} That is correct, as well as other colleagues indicated that.

Dr. {Cassidy.} You said I decided. Then you said the collective we as if the we then signed on.

Mr. {Jaczko.} Congressman, I can just provide you a copy of--

Dr. {Cassidy.} Mr. Ostendorff, what was your feelings about the fact that a different letter was sent aside from the one that the commission approved?

Mr. {Ostendorff.} I had strong issues, and I, basically through my staff, told the chairman’s office that we did not agree with the version that he had. Four of the commissioners had agreed to a particular version, and a different letter went out. And I did not agree with the tone or some of the context of what the chairmen sent. So I

joined my other colleagues to send the letter that you got in your hand.

Dr. {Cassidy.} I really get a sense that there is a lot that is unspoken here, but in a sense that oftentimes the commission as a whole does not sign on to that which the commissioner, the chairman decides, is going to be the course of the commission as a whole. That the chairman, if you will, informs you after the fact and then uses the collective we when initially it was I, he that made the initial decision. Is that an unfair characterization?

Mr. {Ostendorff.} I would like to comment if I could on that. I think the chairman and his office, I would say, were transparent and clear with our office that they disagree with the letter we had, the majority had viewed on, that he was going to proceed differently. But his staff was, I would say, up front, Congressman, in telling us that he had a different approach to it.

Dr. {Cassidy.} Was that after his initial letter had been sent or--

Mr. {Ostendorff.} It was final to the final version going from the chairman’s office.

Mr. {Shimkus.} Gentleman’s time has expired. Chair recognizes the gentleman from Massachusetts, Mr. Markey.

Mr. {Markey.} Thank you, Mr. Chairman. First of all,

Chairman Jaczko, I want to commend you for your commitment to following the science and the requirements of law as you have dealt with Yucca Mountain and Fukushima and other important matters before the commission. I want to commend you for following the law and the science. And I would also like to give you 15 seconds to respond to the discussion that was just taking place here so you can explain the role of the chairman at the Nuclear Regulatory Commission.

Mr. {Jaczko.} Well, Congressman, I appreciate that. I think--I mean ultimately it is my job as chairman to serve as the chief spokesperson and also as the chief congressional liaison for the agency. So, you know, this is an internal matter in the commission. I think it is unfortunate that we are distracted by something like this, with all due respect to the committee here. My focus as chairman has been to focus on safety and nuclear safety.

With any collegial body, there are always going to be differences, and in regard to the particular letter, the letter that I sent expressed my views which are different from the commission on the transmittal of this particular document. I offered all of my colleagues an opportunity to send whatever additional documents they would like as part of that transmittal. None of my colleagues took me up on that opportunity, and then after the fact, they decided to send a

different letter.

So, you know, I think it is unfortunate that this is where we are, but what I care about is nuclear safety. And I will continue to do what I think is right in the interest of nuclear safety.

Mr. {Markey.} Mr. Chairman, it sounds like you made a fair offer to the other commissioners that they rejected. So I commend you on giving that opportunity, and perhaps they could explain why they didn’t take you up on that offer. Seems like that was the regular protocol that they should have followed, to be honest with you. And I don’t know why they are off as, you know, independent operators here rather than working with in a framework that, it seems to me, is long established at the NRC.

Chairman, Jaczko, on March 21, you proposed a review of U.S. nuclear power plant safety in the wake of the Japanese meltdown and said that its results would be released publically. But Commissioner Magwood then counterproposed that it only be released publically after the NRC commissioners voted to approve its release.

I understand why the commission should vote on the regulatory steps needed, but other safety documents, routinely released publically without a commission vote to enable the release of those documents. Do you think it was a

better procedure for you just to be able to release those safety documents so that the public could know what was taking place?

Mr. {Jaczko.} I did. I thought this was such a high profile and important issue. It was important that the task force that we developed have its report provided publically and to the commission for the commission then to weigh in on. And I am pleased to say that in the end the commission did wind up supporting that particular proposal, and I think it is the right decision.

Mr. {Markey.} Yeah, and I strongly disagree with the position which Commissioner Magwood took, and I just want to put that out on the record. Now, I have also learned from an NRC employee that inspectors were told not to investigate whether vulnerabilities like the ones that lead to the meltdown in Japan existed at U.S. reactors.

When inspectors complained, that they were then granted permission to examine these vulnerabilities but were told to keep all of their findings secret and out of the NRC’s public report. That is unacceptable, and I am asking each one of you to commit to me that these inspections will include an assessment of all vulnerabilities exposed in U.S. reactors and that all the results, except for those that are truly security sensitive, will be made part of the public record.

Yes or no, Mr. Chairman.

Mr. {Jaczko.} Yes.

Mr. {Markey.} Yes. Commissioner Svinicki, yes or no?

Ms. {Svinicki.} The inspections are to our regulations, and aside from security findings, will be made public. That is my understanding, sir.

Mr. {Markey.} Okay, yes. Commissioner Magwood, yes or no?

Mr. {Magwood.} The inspections are meant to compare plant conditions with the requirements as per--

Mr. {Markey.} Is that a yes, Commissioner?

Mr. {Magwood.} Yes, will be made public.

Mr. {Markey.} Okay, yes. Thank you. Commissioner Ostendorff, yes or no?

Mr. {Ostendorff.} I would like to explain. I don’t think a yes or no answer here is appropriate, Congressman, to be responsive. I think there has been a lot of confusion on matters that are either safeguards material or related to what is called the B5B inspections--

Mr. {Markey.} Anything that is security sensitive can be kept out. Everything else should be made public. Do you agree with that?

Mr. {Ostendorff.} I agree with that.

Mr. {Markey.} Okay, thank you. As you know, the loss

of electricity was the ultimate cause of the meltdowns in Japan. Will the post-Fukushima task force, Mr. Chairman, be looking at the question of whether emergency generators should be available for spent fuel pools even when there is no fuel in the reactor core?

Mr. {Jaczko.} Yeah, I think that is something we should be looking at. And the commission, in fact, had a meeting on this issue of what we call station blackout, which is when all the electricity is lost, and that issue came up there as well, the need to ensure that spent fuel pools are covered.

Mr. {Markey.} Okay, thank you. Thank you, Mr. Chairman, very much.

Mr. {Shimkus.} Thank you. Chair now recognizes gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. {Griffith.} Thank you, Mr. Chairman. I have to tell you, I am just really perplexed. I don’t understand your processes, and I don’t follow it. It doesn’t seem to me to be in the principles of little d democracy and little r republicanism, and I just don’t get it. So what I would like to know is I am not as concerned about the underlying policy at this moment as I am the fact that it doesn’t look like we can get policy.

So where exactly are your rules, and how did you come up with if we don’t vote, it is a no vote? I mean I understand

there may be some procedural mechanism where that is, but how do you not participate, but it is equated as a no vote? That may be in your rules. Do you have a set of rules, Mr. Chairman?

Mr. {Jaczko.} We do, and one of the options is for nonparticipation.

Mr. {Griffith.} And can you provide those rules to us please?

Mr. {Jaczko.} Absolutely, they are publically available on our website, but we can provide them.

Mr. {Griffith.} All right, I will get my staff to get them for me as well, but I would like to have those rules entered as part of the record because I think it may clarify some of the answers we have heard here today, which are hard to believe.

Mr. {Shimkus.} Without objection, so ordered.

[The information follows:]

********** COMMITTEE INSERT **********

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Mr. {Jaczko.} I think what you will find is that our procedures are overly complex. One of the things that I--

Mr. {Griffith.} Hang on. I only get so much time. And who promulgates these rules? Did you all do that at prior commission?

Mr. {Jaczko.} Prior commission.

Mr. {Griffith.} So you all could fix it?

Mr. {Jaczko.} We could.

Mr. {Griffith.} Well, why don’t you? That would be a nice thing to do. And I am disturbed that you would say, Mr. Chairman, it is a shame we were being distracted by this because the way I heard that, and I am sure what it is not what you really meant was, it sure is a distraction to have to come talk to the elected officials of the United States of America. I am going to give you an opportunity to say that is not what you really meant.

Mr. {Jaczko.} Of course that is not what I meant, and--

Mr. {Griffith.} That is what I thought.

Mr. {Jaczko.} --I have met with many of the members of this committee in one-on-one meetings and am always available to any members of the committee who would like to meet with me or any other members of the commission.

Mr. {Griffith.} And do your rules not allow, like the

Supreme Court does? Because you have got to make these decisions, and apparently a vote was taken. And now you all are arguing over, you know, commas and ands and buts. And so what I am trying to figure out is why can't you have an opinion that says I agree with the majority, a concurring opinion that is somewhat different, or a dissenting opinion, and get this decision out there because it does appear from the outside that the foot dragging is an attempt to try to wait until somebody comes along that agrees with you more than apparently whatever votes you got behind the scenes. And I am guessing it wasn't a two-two vote because if it was a two-two vote, you could have gotten an order that said we couldn't reach an agreement.

Mr. {Jaczko.} Well, again, and I think I can't remember who is was mentioned that when you don't have information, there gets to be a lot of speculation about motives and other issues. And again I can't comment on the particular issue, but as you indicated, the Supreme Court is a good analogy here. This particular issue is done like a judicial issue where we do not deliberate in public. The results are only released with the final decision when the commission comes to that final decision. We don't yet have that final decision.

In all other regards, we strive to make--

Mr. {Griffith.} But wouldn't you agree, based on what I

have heard here today, that you have made a decision. The argument is over what to put in the order. So it is not--you are not using your rules or you are not allowing--or you are not using the analogy of the Supreme Court there because they come out with a 5-4 decision, and maybe it is 3 and 2, three thought this way and 2 thought that way, but they reached the final decision.

It sounds like to me what I am hearing is you got a majority, but then you--because you can’t get a majority to agree on the specific reason why they reached that conclusion, you are not able to issue an order. And so wouldn’t it be better to go ahead and issue the order with concurring opinions as opposed to having us--I mean you all are the people responsible for making these decisions.

This took place--and I am new to this, so I am not somebody that has a long history with this. But a decision was made in August. It is May, and you all are still arguing over commas and jots and tittles. Not acceptable.

Mr. {Jaczko.} I appreciate your concerns, and I can assure that, from my perspective, the commission is not arguing over the trivial matters that you have discussed. The--

Mr. {Griffith.} I don’t consider jots and tittles or commas and ands and ors to be trivial, but I do think that if

a decision was made, you all need to get a decision out there so the people can start operating based on that decision instead of being in the dark as to what you all think should be done.

Mr. {Jaczko.} And in my understanding and my view, the decision has not yet been made. That is what we are working towards.

Mr. {Griffith.} Well, I understand that, but a majority of the folks here seem to think a decision was made and you are just arguing over the language. That is what I have heard here today. I thank you, Mr. Chairman, and yield back my time.

Mr. {Shimkus.} Gentleman yields back his time. I am concerned that I might have to figure out what a tittle is, but that will be for another hearing. The chair recognizes Mr. Engel for 5 minutes.

Mr. {Engel.} Thank you very much, Mr. Chairman, for holding this hearing today. Chairman Jaczko, I understand that you are in the process of working out details for a visit next week to the Indian Point Energy Center, which is just outside my district. I would like to start by discussing the procedures used to relicense our nuclear reactors. I am very concerned about Indian Point, and I have called for its closure many, many years ago.

I am not against nuclear power, but I think that is an antiquated plant located near New York City. If it was being built today, it would never been sited there in Buchanan, New York. It is on two fault lines. One of the planes that hit the World Trade Center went directly above Indian Point.

And when you talk about all our nuclear reactors in the country, there are 104, and all of their reactors were granted initial operating licenses for 40 years. And therefore, many of those licenses are up for renewal. So far, every reactor in this country that has requested a license renewal has been approved. The NRC never denied a single application for license renewal, and one of the reasons for that is a rule change in the early 1990s that limits the factors the NRC evaluates when considering a relicensing application.

It concerns me, and I hope it concerns you because obviously there needs to be a focus on protecting the health and safety of our citizens. And I believe the current process fails to do that. It doesn’t take into account certain serious safety issues including proximity to population centers, inability to evacuate in case of emergency, and I certainly believe that is the case with Indian Point. A risk of seismic activity. We have just recently learned that Indian Point is on two fault lines.

And threat of terror attack, and New York City unfortunately is the number one threat for terrorist attack.

There are 25 million people living within a 50-mile radius of Indian Point. In Japan, they wanted to get everybody out of the 50-mile radius. You actually have New York City in it. I am told it is the power plant that is closest to any major metropolitan area in the country, and yet it is the most populated metropolitan area. So it makes no sense to me.

The NRC released a report, which said that among U.S. nuclear plants, Indian Point’s reactor number three has the highest risk of core damage from an earthquake of any nuclear power plant in the country. Now, it said it was one in 10,000, but, you know, one in 10,000, it is still number one on the list. And researchers at Columbia University have determined that Indian Point, and I quote them, ``is clearly one of the least favorable sites in our area from an earthquake hazard and risk perspective.''

Now, none of these factors can be considered in the decision to relicense the reactors at Indian Point. They applied to react them. My colleague, who also has a district very close, Nita Lowey, and I have introduced a nuclear power licensing reformat, which is H.R. 1268. Our bill is simple. It would require the NRC to evaluate relicensing applications

for nuclear reactors with the same stringent criteria used to license new plants.

Right now, it is a much less stringent criteria, so I don’t understand why that should be the factor. Whether you are approving a new power plant or relicensing a new power plant, safety concerns are safety concerns. It doesn’t matter whether it is new or old or relicensing or not. So I would, you know, like to ask you about that and see if we could change the law. Obviously we could, but it would be a lot easier to do it if the commissioners understood and agreed with me and my colleague Congresswoman Lowey that we need to make sure that no matter whether you are building a new plant or relicensing a plant, the same stringent rules would be followed.

Mr. {Jaczko.} Well, as you indicated, our license renewal process is really focused on the aging of the systems and the components that are important for safety. So, in effect, what it does is it puts additional requirements on a plant that is having its lifetime extended. Every plant, regardless of whether it is one year old or 45 years old is required to meet and follow all of our regulations.

So if we get new information, for instance, as we are looking at with the seismic issues related to Indian Point, we don’t wait for license renewal to address those. We

require utilities to take that information and promptly address that to make sure that the plant is safe regardless of what its age is.

So what we found is the way the license renewal approach would work best is to have this focus really just on these additional programs that are necessary to ensure that there are no effects from the aging of the equipment as it gets older with the extended life of the plant.

But, of course, if Congress were to give us additional direction, of course, we would follow whatever additional direction would be provided. But we have gone through--over 66 units now have used the existing rules for their relicensing. So it is unlikely, I think, that we would be looking at particular changes in the near future.

Mr. {Engel.} Well, just let me say--and I know my time is up--I look forward to your coming to the plant, and I really believe that this plant should be shut down. I really do, and so most of the members of Congress that have districts right across from the plant. Thank you, Mr. Chairman.

Mr. {Shimkus.} Gentleman’s time has expired. Chair recognizes the gentleman from--Mr. Harper, for 5 minutes.

Mr. {Harper.} Thank you, Mr. Chairman, and appreciate each of you being here today, and with what has happened

recently in Japan, the concern I have on what I have been able to hear today is if ever there was any agency that we cannot afford for it to have any even the hint of internal issues, it would be the NRC.

So we want to certainly give you the tools to do what you need to do, but when you look at the safety issues that you have the responsibility for, we can’t afford to have any infighting. And it greatly concerns me on what Mr. Cassidy was asking earlier about these, the letters that went out to Chairman Isa. And I will ask this, Mr. Chairman, if I may. In your letter that went, when it was sent, you knew at that point, the other four commissioners were not in favor of that letter? Is that true?

Mr. {Jaczko.} No, I did not.

Mr. {Harper.} Okay, did you make any--did you consult with them before that letter went out?

Mr. {Jaczko.} I did. I circulated the draft of the letter that I intended to send, and I offered them an opportunity to include their views with that letter as well as separate views or in any way that they would like.

Mr. {Harper.} Okay, and I will ask each of the commissioners your recollections of how that went down.

Ms. {Svinicki.} I would testify today that we have a process for voting on correspondence that goes to members of

Congress. It all goes under the chairman's signature, but certain of it is voted as a voting matter by the entire commission. There were four votes, in my recollection, in alignment for the letter that is--was subsequently transmitted.

The chairman's office notified my staff that the chairman intended to send a different letter. We were solicited for whether or not individual commissioners would append views to that. I interpreted that to be an offer to provide dissenting views when I was in a majority, and therefore I reinstated through my staff to the chairman's staff that I stuck by my vote for the other letter and that is my recollection.

Mr. {Harper.} Okay, Mr. Magwood?

Mr. {Magwood.} When we were informed that the chairman's office intended to proceed with the letter that was ultimately sent, we indicate that we stood by the original letter and saw no reason to change our vote at that time. And when the letter was sent, we signed on to the subsequent letter, which you have before you.

Mr. {Harper.} Okay, Mr. Ostendorff?

Mr. {Ostendorff.} My recollection is the same as Commissioner Magwood's and Svinicki's. Four commissioners had voted for identical language prior to the chairman

sending the letter that he sent to us for comment, and under our commission correspondence procedures, where a majority had ruled that -- or voted on a matter with a certain outcome, I thought that original letter the four of us had supported should be issued.

Mr. {Harper.} All right, and I would like to kind of back up to the Japan incident that occurred, and I will ask each of the commissioners. If you were--or when were you notified that the chairman was planning to exercise emergency powers under the Emergency Reorganization Act?

Ms. {Svinicki.} I have never been notified that the chairman is invoking his emergency power under the Energy Reorg Plan.

Mr. {Harper.} Okay, aren’t you--isn’t that something, part of the collegial atmosphere? Is that something you would have expected you would have been notified of that before it took place?

Ms. {Svinicki.} Yes, that would have been my expectation, but I cannot testify that I am aware that there is a specific requirement for that. I would need to look that up.

Mr. {Harper.} Okay, but that would come under the general collegial thought that you would have as a commission?

Ms. {Svinicki.} Yes.

Mr. {Harper.} Mr. Magwood?

Mr. {Magwood.} Yeah, I have never been notified.

Mr. {Harper.} Have or have not?

Mr. {Magwood.} Have not.

Mr. {Harper.} Okay, Mr. Ostendorff?

Mr. {Ostendorff.} I have not had full notification. However, I did discuss questions and concerns I had on this topic with the chairman in a meeting I had with him on March 31.

Mr. {Harper.} Okay, now you know how sometimes talk starts, and you hear things. And so I just would like to know, there was some talk that the chairman told perhaps the other commissioners, maybe other staff involved, to stay out of the emergency operations center during the Fukushima crisis. And I am even told that there was demand of perhaps placing a guard at the entrance to the center to let only designated staff into the center. Is this true or not true or just one of those, you know, stories that get started?

Ms. {Svinicki.} Chairman Jaczko requested that members of the commission not visit the emergency operations center so as not to distract the staff from their important responsibilities.

Mr. {Magwood.} Same answer as Commissioner Svinicki.

We were on a phone conference call, and the chairman made that request.

Mr. {Harper.} Okay.

Mr. {Ostendorff.} I agree, and that call was actually on March 17.

Mr. {Harper.} Now, I understand that you have--the president designates somebody to be the chairman. I understand that, and the chairman has certainly the administrative responsibility. But when it comes to something like this, did you have any reaction to the fact that you were told to stay out?

Ms. {Svinicki.} I did not interpret the presence of a commissioner would necessarily be a distraction, but I understood, of course, that staff needed to focus on their important responsibilities.

Mr. {Harper.} Sure, but if you were in the room, do you consider yourself to have been a distraction or would be disturbing?

Ms. {Svinicki.} I would attempt not to be a distraction.

Mr. {Harper.} Okay, and my time is up, so I yield back, Mr. Chair.

Mr. {Shimkus.} Gentleman yields back his time. Chair recognizes gentleman from Pennsylvania, Mr. Murphy, has no

questions. Is any other member here seeking to ask questions of the commissioners? If not, I have to make a couple announcements. First of all, the record will be open for 30 days for submission of additional questions to the commission. If you would respond as you--if you figure out how to do that in collegial manner, we would appreciate that.

Also announcement for my colleagues that we will clear the room to prepare the room for the markup of the bill. Maybe get through opening statements before they deal with votes on the floor. And then I would like to end. In closing, I would just like to reiterate that we are continuing our investigation into the many issues that have been touched on today. And I would just like to get an insurance from each of the commissioners that you would be responsive to our requests in an open, forthright, and expedited manner, and that we won’t encounter any undue delays in receiving documents or information from the commission.

I would also like to stress that, of course, no undue influence or suggestion should be made to the NRC staff or anyone else regarding responses to this committee’s investigation. Chairman Jaczko, can you please give me that assurance?

Mr. {Jaczko.} We certainly will be as responsive as we

can to the committee.

Mr. {Shimkus.} Commissioner Svinicki?

Ms. {Svinicki.} Yes, I give that assurance.

Mr. {Shimkus.} Commissioner Magwood?

Mr. {Magwood.} Absolutely.

Mr. {Shimkus.} And Commissioner Ostendorff?

Mr. {Ostendorff.} Yes.

Mr. {Shimkus.} Thank you very much, and the hearing is adjourned.

[Whereupon, at 12:18 p.m., the Subcommittees proceeded to other business.]