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4 ``THE NUCLEAR REGULATORY COMMISSION: POLICY AND GOVERNANCE

5 CHALLENGES''

6 THURSDAY, FEBRUARY 28, 2013

7 House of Representatives,

8 Subcommittee on Environment and the Economy

9 joint with the

10 Subcommittee on Energy and Power

11 Committee on Energy and Commerce

12 Washington, D.C.

13 The subcommittees met, pursuant to call, at 9:02 a.m.,
14 in Room 2123 of the Rayburn House Office Building, Hon. John
15 Shimkus [Chairman of the Subcommittee on Energy and Power]
16 presiding.

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17 Members present: Representatives Shimkus, Whitfield,
18 Scalise, Gingrey, Hall, Pitts, Terry, Murphy, Burgess, Latta,
19 Harper, Cassidy, McKinley, Kinzinger, Griffith, Bilirakis,
20 Johnson, Barton, Upton (ex officio), Rush, Tonko, Dingell,
21 Markey, Engel, Green, Capps, Barrow, Christensen, Castor,
22 McNerney, and Waxman (ex officio).

23 Staff present: Nick Abraham, Legislative Clerk; Gary
24 Andres, Staff Director; Charlotte Baker, Press Secretary;
25 Mike Bloomquist, General Counsel; Sean Bonyun, Communications
26 Director; Allison Busbee, Policy Coordinator, Energy and
27 Power; Annie Caputo, Professional Staff Member; Vincent
28 Esposito, Fellow, Nuclear Programs; Tim Hassenboehler, Chief
29 Counsel, Energy and Power; Alexa Marrero, Deputy Staff
30 Director; David McCarthy, Chief Counsel, Environment and the
31 Economy; Mary Neumayr, Senior Energy Counsel; Chris Sarley,
32 Policy Coordinator, Environment and the Economy; Peter
33 Spencer, Professional Staff Member, Oversight; Lyn Walker,
34 Coordinator, Admin/Human Resources; Jeff Baran, Democratic
35 Senior Counsel; Phil Barnett, Democratic Staff Director;
36 Alison Cassady, Democratic Senior Professional Staff Member;
37 Greg Dotson, Democratic Staff Director, Energy and

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38 Environment; and Caitlin Haberman, Democratic Policy Analyst.

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|
39 Mr. {Shimkus.} I would like to call the hearing to
40 order, and welcome our guests and my colleagues. I recognize
41 myself for 5 minutes for an opening statement.

42 Before I do that, there are early votes, as a lot of
43 members know. We are going to try to go rapidly through the
44 opening statements as quick as possible and then get into our
45 round of questioning. We will then break for votes. We will
46 see what the will of the committees are. We may have to come
47 back to finish up at least the first round. With that, I
48 would like to now recognize myself for 5 minutes for my
49 opening statement.

50 First, let me welcome you all here. It is nearly 2
51 years since the Fukushima accident and nearly 1 year since
52 the NRC issued a suite of requirements responding to the
53 accident. Since you last testified before this committee,
54 the NRC instituted a moratorium on licensing actions until
55 the agency addresses a court remand of its Waste Confidence
56 rule. We have also heard announcements two nuclear plants
57 will close prematurely and there is speculation in the press
58 that several others may also.

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59 So, it is in this context I would like to discuss the
60 defense-in-depth philosophy, which has been fundamental to
61 nuclear safety in our country since the industry's inception.
62 I am sure we all agree it plays a vital safety role. That
63 was a painful lesson for the Japanese to learn and one that
64 was highlighted by the Diet report, which stated: ``The
65 defense-in-depth concept used in other countries has still
66 not been fully considered.''

67 With the Atomic Energy Act, Congress endeavored to
68 balance the benefits that nuclear energy brings to the
69 general welfare with protection of public health and safety.
70 I am concerned the Commission risks undermining this balance
71 by shifting to an unlimited application of the defense-in-
72 depth philosophy in reaction to the Fukushima accident.

73 Defense-in-depth has, or should have, a sensible
74 constraint. For example, I understand there is a three-unit
75 nuclear plant here in the United States, which currently has
76 eight emergency diesel generators. These reactors need six
77 generators to ensure safety in case the plant loses access to
78 offsite supplies of electricity. That means this site has
79 two redundant spares. In the wake of Fukushima, this site

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80 will add two more in a separate bunker away from the plant
81 for a total of ten diesel generators.

82 An unmanaged application of the defense-in-depth
83 philosophy would question why stop at 10? Why not have 20?
84 Or a hundred? I don't know what the right number is.
85 However, common sense and critical thinking should show that
86 at some point there are diminishing safety benefits from
87 additional generators. It seems to me cost-benefit analysis
88 provides a necessary and sensible constraint in this
89 situation: that safety gains should be significant enough to
90 outweigh additional costs.

91 Unfortunately, with the NRC staff's filtered-vents
92 proposal, we have exactly the opposite. The staff's
93 recommendation to mandate filtered vent structures failed the
94 cost-benefit test so the staff chose to justify the mandate
95 based upon the defense-in-depth philosophy. The staff
96 recommended this mandate against the advice of the NRC's body
97 of experts, the Advisory Committee on Reactor Safeguards.
98 That committee advised a more holistic approach, recognizing
99 that all plants are different and a one-size-fits-all mandate
100 may create unintended consequences.

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101 As the Near-term Task Force wrote in their 2011 report
102 following the Fukushima accident: ``Adequate protection has
103 typically only led to requirements addressing beyond-design-
104 basis concerns when they were found to be associated with a
105 substantial enhancement in safety and justified in terms of
106 cost.''

107 Recommendation one in their report was that the
108 Commission should reassess the role that the defense-in-depth
109 philosophy should play. While the Commission has not
110 resolved this policy question, agency staff nonetheless
111 appears to be embedding its preferred approach in the
112 filtered-vent recommendation. I don't think the staff should
113 attempt to set policy on a matter on which the Commission has
114 not yet reached a conclusion.

115 Furthermore, this matter was raised in our January 15th
116 letter, which 20 of my colleagues and I signed, and the
117 Commission's response was unsatisfactory beginning with the
118 failure to answer our very first question: When will the NRC
119 conduct a gap analysis of the regulation differences between
120 the United States and Japan? I expect some of my colleagues
121 will likely share some additional concerns with your

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122 response. I am disappointed that you didn't take your
123 communication with members of this committee more seriously
124 and I expect that you will do that in the future.

125 I again want to thank you all for being here today. I
126 look forward to your testimony.

127 [The statement of Mr. Shimkus follows:]

128 ***** COMMITTEE INSERT *****

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129 Mr. {Shimkus.} And now I would like to yield to our
130 ranking member, Mr. Tonko, for the purposes of an opening
131 statement.

132 Mr. {Tonko.} Thank you, and good morning. Thank you,
133 Chair Shimkus and Chair Whitfield, for holding this hearing.
134 I thank Chairman Macfarlane and Commissioners Svinicki,
135 Apostolakis, Magwood and Ostendorff for appearing before the
136 subcommittees today.

137 The work of the Nuclear Regulatory Commission is
138 extremely important to the public. Congress recognized way
139 back in 1974 that the licensing and regulation of nuclear
140 power and radioactive materials should be separate from
141 research and development and promotion of the civilian
142 nuclear industry. Public confidence in this technology is
143 directly related to their confidence that the NRC will act to
144 ensure the safe operation of nuclear power plants and the
145 safe handling of nuclear materials.

146 Nuclear power provides nearly 20 percent of our
147 electricity nationally. If we are to continue to rely on
148 nuclear power, we must maintain safe operations and we must

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149 deal with nuclear waste in a manner that inspires public
150 confidence and serves the needs of the 104 power plants that
151 we have across our Nation. It is a tall order, and one that
152 obviously comes with many challenges. The tragic events in
153 Japan that occurred at the Fukushima Daishi plant were a
154 stark reminder of how important safety is to this industry.
155 To the public, there is no such thing as a small nuclear
156 accident. A large one is devastating. I encourage the NRC
157 to take the steps necessary to implement the recommendations
158 from the review of that tragedy to further improve the safety
159 of our Nation's nuclear power plants.

160 Again, I thank you for being here this morning. I look
161 forward to your testimony.

162 I would like now to yield my remaining time to the
163 ranking member of the Energy and Power Subcommittee,
164 Representative Rush.

165 [The prepared statement of Mr. Tonko follows:]

166 ***** COMMITTEE INSERT *****

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|
167 Mr. {Rush.} I want to thank you, Mr. Tonko, for
168 yielding. I want to thank the chair, and I want to thank
169 you, Chairwoman Macfarlane, and all the NRC Commissioners for
170 being here today.

171 As a representative of the great State of Illinois,
172 which houses more nuclear reactors than any other State in
173 the country, I am eager to hear about the progress that the
174 NRC is making in regards to recommendations that the Near-
175 Term Task Force released back in July 2011 following the
176 nuclear disaster at Fukushima. My constituents want to be
177 assured that the NRC adopts commonsense protocols for both
178 mitigating risk of a nuclear disaster as well as procedures
179 to safeguard the public in the event that a disaster occurs.
180 Safety is my primary concern, and I would support the
181 implementation of a performance-based approach that will
182 allow licensees to employ a combination of systems to address
183 performance standards and avoid widespread disaster in the
184 case of emergencies.

185 Another issue of great importance to me is the NRC's
186 work with Historically Black Colleges and Universities,

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187 HBCUs. In May 2012, the NRC was honored as one of the
188 government agencies that was most supportive of the
189 engineering departments of HBCUs, and I look forward to
190 hearing more about the types of programs and forms of support
191 the NRC provides to these HBCU colleges and universities. It
192 is in the national interest to make sure that we are
193 educating all of our students to enter the STEM fields of
194 science, technology, engineering and math, and so it is very
195 encouraging to hear that the Nation's foremost nuclear
196 authority is providing its support to help move our Nation
197 forward in this effort.

198 I look forward to engaging the Commissioners on these
199 very important issues, and I yield back the balance of my
200 time.

201 [The prepared statement of Mr. Rush follows:]

202 ***** COMMITTEE INSERT *****

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|
203 Mr. {Shimkus.} The gentleman yields back the balance of
204 his time. The Chair now recognizes the chairman of the full
205 committee, Mr. Upton, for 5 minutes.

206 The {Chairman.} Well, thank you, Mr. Chairman.

207 Certainly, oversight of federal agencies is a very
208 important responsibility for this committee, especially for
209 the NRC, given the broad scope of changes within the nuclear
210 industry, and there are two particular issues on my mind
211 today: the NRC's reactor oversight process and the impact of
212 budget sequestration on the NRC.

213 In 2000, the NRC's reactor oversight process was
214 implemented under Chairman Richard Meserve's leadership, a
215 chairman well respected on both sides of the aisle. The
216 development of the process was very rigorous with the goal of
217 creating an objective, measurable process that would provide
218 an accurate representation of a plant's performance while
219 minimizing subjectivity.

220 Last year, the Palisades plant in my district spent time
221 in column 3, a designation for troubled plants, which
222 requires significantly increased inspections. This raised

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223 considerable concerns among folks in my corner of the State,
224 concerns certainly that I shared. Entergy needed to do
225 better, and they outlined their comprehensive and methodical
226 plans for returning Palisades to the high level of safety
227 that all plants should have.

228 This past November, the NRC returned Palisades back to
229 column 1, the best column, which normally would signify the
230 NRC's conclusion that the plant is operating safely and
231 should give the local communities confidence that the plant
232 is back on the straight and narrow. However, when the NRC
233 made the determination to move Palisades back into column 1,
234 the agency did so begrudgingly, I believe, and qualified the
235 rating, indicating that it would continue to apply increased
236 oversight beyond the normal inspections for column 1. That
237 does send a mixed message to the community: does Palisades
238 belong in column 1 or not, and I would like some
239 clarification on that.

240 In closing, I would like to echo the disappointment
241 expressed by Chairman Shimkus regarding the NRC's response to
242 our January letter. We did ask very detailed questions, yet
243 the response was somewhat dismissive, even contradicting the

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244 Japanese Diet report' conclusion that they had not fully
245 considered the defense-in-depth philosophy as Chairman
246 Shimkus mentioned. You wrote that you would give us careful
247 consideration but the answers were not quite where we would
248 like them to be.

249 So with that, I would yield back the balance of my time
250 to Chairman Whitfield.

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

252 ***** COMMITTEE INSERT *****

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|
253 Mr. {Whitfield.} Thank you very much, and I want to
254 certainly welcome all the Commissioners here today. We
255 appreciate the important work that you do and recognize the
256 importance of nuclear energy for providing energy in our
257 country.

258 The NRC Near-Term Task Force report, which was issued
259 last summer, highlighted some lessons learned from the Three
260 Mile Island accident. Some of the actions taken by the NRC
261 after Three Mile Island were not subject to a structured
262 review and were subsequently found not to be of substantial
263 safety benefit and were removed.

264 I am concerned that the NRC's consideration of post-
265 Fukushima issues is not as structured and integrated as it
266 should be. I would like to call your attention to four items
267 which appear to be interrelated but which the Commission is
268 considering individually, independent of each other. Number
269 one: the Near-term Task Force Recommendation number one
270 concerning the defense-in-depth philosophy, which Chairman
271 Shimkus mentioned; number two, the Severe Accident Management
272 Order the Commission issued a year ago; number three, the

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273 filtered-vents proposal about which we wrote to you; then
274 number four, the economic consequences proposal regarding the
275 potential for land contamination.

276 From looking at records of the Commission, it is quite
277 clear that many statements have been issued about how these
278 issues are related to each other and yet it seems that the
279 Commission is determined to treat each one separately in what
280 some people say is an unstructured process.

281 The Commission's 2011 decision to prioritize its work
282 into three tiers was a good start but time has passed and
283 there is a great deal more information that has surfaced
284 since then. It seems like a more integrated approach to
285 post-Fukushima issues is long overdue. So I hope we have an
286 opportunity to discuss that some this morning, and I would
287 yield back the balance of my time.

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

289 ***** COMMITTEE INSERT *****

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|
290 Mr. {Shimkus.} The gentleman yields back the balance of
291 his time. Without objection, I would like to be able to
292 allow Mr. Waxman when he arrives 5 minutes to do his opening
293 statement, and we will move right into questions until he
294 arrives. So I would like to recognize myself for the first 5
295 minutes--oh, we will go to the Commission. We are so anxious
296 to talk to you all, so Chairman, you are recognized 5 minutes
297 for your opening statement.

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|
298 ^STATEMENTS OF ALLISON MCFARLANE, CHAIRMAN, NUCLEAR
299 REGULATORY COMMISSION; HON. KRISTINE L. SVINICKI,
300 COMMISSIONER; HON. GEORGE APOSTOLAKIS, COMMISSIONER; HON.
301 WILLIAM D. MAGWOOD, IV., COMMISSIONER; AND HON. WILLIAM C.
302 OSTENDORFF, COMMISSIONER

|
303 ^STATEMENT OF ALLISON MACFARLANE

304 } Ms. {Macfarlane.} Thank you, Chairman Shimkus. Good
305 morning. Chairman Whitfield, Ranking Member Rush, Chairman
306 Shimkus, Ranking Member Tonko and distinguished members of
307 the subcommittees, on behalf of the Commission, I appreciate
308 the opportunity to appear before you to discuss policy and
309 governance at the NRC.

310 When the Commission appeared before you last on July 24,
311 2012, I pledged to work closely with my fellow Commissioners
312 and to approach my job as Chairman in a collaborative and
313 collegial manner. Over the past 7 months, we have developed
314 a very productive, respectful and collegial working
315 relationship. In my tenure, I have also gained an even

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316 greater appreciation of the expertise of the NRC staff who
317 carry out the mission of ensuring the safe and secure use of
318 radioactive materials and protecting public health and safety
319 and the environment. I believe the NRC is operating very
320 well and is fulfilling its mandate. I am pleased with the
321 NRC's commitment to use operating experience and insights to
322 continuously improve and remain a strong and effective
323 regulator.

324 As we approach the second anniversary of the great
325 Tohoku earthquake and the subsequent tsunami in Japan, I
326 would like to share my personal impressions from a recent
327 visit to the Fukushima Daishi site. I was struck by the
328 deserted villages, abandoned roads and rail lines that we
329 passed on the drive to the plant. More than 160,000 people
330 today are displaced from their homes there, and the site
331 itself is scattered with twisted metal and debris from the
332 force of hydrogen explosions in the reactor buildings as well
333 as the tsunami itself. While the Japanese are diligently
334 working to clean up and decommission the site, it will take
335 them many decades to complete.

336 The NRC continues its work to apply lessons from

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337 Fukushima to the regulation of NRC-licensed nuclear
338 facilities. You may recall that the NRC identified a series
339 of recommendations that were subsequently prioritized in
340 three categories or tiers. The NRC has already taken many
341 actions on the near-term priorities and is now turning its
342 attention to long-term actions. We are actively exchanging
343 lessons learned with the international community and
344 maintaining a high level of open collaboration with the
345 industry and public.

346 Throughout this process, the agency remains determined
347 to ensure that the regulatory actions stemming from this
348 review do not become a distraction from day-to-day safe plant
349 operations. The NRC has approved license renewals for 73
350 reactors and continues to review additional applications.
351 However, two reactors that had planned to operate an
352 additional 20 years have recently announced their intention
353 to permanently close due to economic factors. In the months
354 and years ahead, the NRC will adjust our oversight from
355 ensuring these reactors operate safely to ensuring they will
356 be decommissioned safely.

357 Overall, the U.S. reactor fleet is performing well.

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358 There are a few reactors that have had significant
359 performance problems, which the NRC is addressing in
360 accordance with its regulatory procedures. Browns Ferry Unit
361 1 continues to address equipment problems. Fort Calhoun
362 remains shut down as it addresses problems stemming from an
363 inadequate flood strategy and a fire. And the San Onofre
364 Nuclear Generating Station has been shut down for more than a
365 year due to unexpected degradation of the plant's replacement
366 steam generators. The NRC will not allow any of our licensed
367 facilities to operate unless we are satisfied that they can
368 do so safely.

369 Since the NRC issued the first combined operating
370 licenses last year for new reactors at the Vogtle and Summer
371 sites in Georgia and South Carolina, construction has begun.
372 Although there has been significant progress at both sites,
373 there have also been some delays due to design implementation
374 and fabrication issues. We anticipate that all necessary
375 license amendments will be issued by the end of this week,
376 which will permit both sides to begin pouring first nuclear
377 concrete.

378 Among other activities in the licensing and regulation

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379 of radioactive materials, the NRC is preparing to implement
380 construction and operating inspection programs for two newly
381 licensed facilities: a uranium laser enrichment facility and
382 the depleted uranium deconversion facility. We have also
383 revised our regulations for the physical protection of spent
384 fuel transportation and are preparing to publish a new rule
385 to expand security measures for the physical protection of
386 category 1 and 2 byproduct material. The NRC staff continues
387 to make progress in addressing the issues cited in the Court
388 of Appeals decision on waste confidence. Our work is already
389 well underway and on schedule for completion by September
390 2014. The Commission has directed that all affected license
391 application review activities will continue but the agency
392 will not issue final licenses dependent upon the waste
393 confidence decision until the court's remand is addressed.
394 The agency is actively engaging the public in the process.

395 The NRC continues to make international cooperation a
396 priority with active involvement in a variety of bilateral
397 and multilateral initiatives. I recently assumed the
398 chairmanship of the Multinational Design Evaluation Program,
399 an organization that strives to leverage the knowledge and

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400 resources of regulators to improve the design reviews of new
401 commercial power reactors. In the next several months, the
402 NRC will continue its focus on these and other important
403 issues.

404 I am proud of our accomplishments and confident that we
405 will address the challenges ahead with the same high-quality
406 work. I thank you for the opportunity to appear before you
407 and would be happy to answer your questions.

408 [The prepared statement of Ms. Macfarlane follows:]

409 ***** INSERT 1 *****

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|
410 Mr. {Shimkus.} Thank you, Chairman.

411 Now I would like to turn to the ranking member of the
412 full committee, Mr. Waxman, for his 5-minute opening
413 statement. Then we will turn back to the Commissioners for
414 your hopefully 2-minute opening statements.

415 Mr. {Waxman.} Thank you very much, Mr. Chairman. I
416 want to begin I want to begin by welcoming Dr. Allison
417 Macfarlane, the Chairman of the Nuclear Regulatory
418 Commission, and her colleagues on the Commission. Thank you
419 all for being here today.

420 By all accounts, Chairman Macfarlane has ushered in a
421 new era of collegiality at the Commission, and I commend her
422 for her leadership. The Commission is grappling with a
423 number of important matters that deserve our attention.

424 In California, the San Onofre Nuclear Generating Station
425 has been shut down for more than a year due to serious
426 problems with the plant's brand-new steam generators. The
427 generators cost California ratepayers \$670 million. This
428 expense was large, but the new equipment was supposed to last
429 for decades. Two of the steam generators did not even last a

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430 year. Southern California Edison has requested permission to
431 restart one of the plant's two reactors. The Commission has
432 an obligation to ensure that the reactor could operate safely
433 before it is allowed to restart, and California residents are
434 counting on the Commission to do its job carefully and with
435 safety as the first priority.

436 But the Commission should also look at its own actions
437 to understand why it did not detect the design and
438 manufacturing flaws in these steam generators before they
439 were turned on. If the NRC had detected these problems
440 before the generators were installed, California ratepayers
441 could have saved hundreds of millions of dollars.

442 The Commission also continues to address the safety gaps
443 revealed by the Fukushima nuclear accident in Japan, which
444 happened almost 2 years ago. Last year, the Commission
445 issued three orders to U.S. commercial nuclear reactors to
446 enhance safety in the wake of the Fukushima disaster. Today
447 is the deadline for operators to submit their plans for
448 implementing these orders. Nuclear plant operators have
449 until the end of 2016 to fully implement their plans to
450 increase safety. It is important that this safety deadline

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451 does not slip as others have in the past.

452 A major problem at Fukushima was that hydrogen gas built
453 up in the reactor and eventually exploded when the pressure
454 could not be released. One of the Commission's post-
455 Fukushima orders requires reactors similar to the type used
456 at Fukushima to install pressure-venting systems that operate
457 reliably in severe accident conditions. That is a
458 commonsense improvement, and I commend the Commission for
459 requiring that step.

460 The Commission's technical experts recently recommended
461 that the Commission go a step further to require these
462 reactors to install filters on the vents in order to reduce
463 the amount of radioactive material released with any vented
464 gases. The NRC staff conducted a full cost-benefit analysis
465 and concluded that this safety precaution would be amply
466 justified. Safety should be the Commission's top priority,
467 and I urge the Commission to approve the NRC staff's
468 recommendation to require filtered vents as soon as possible.

469 I was pleased to hear Chairman Macfarlane's testimony.
470 I am looking forward to the comments of her colleagues and
471 for the opportunity to ask questions about these issues and

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472 the other significant safety issues pending before the
473 Commission.

474 Thank you, Mr. Chairman. I yield back the time.

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

476 ***** COMMITTEE INSERT *****

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|

477 Mr. {Shimkus.} The gentleman yields back his time.

478 The Chair now recognizes Commissioner Svinicki for 2

479 minutes.

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|
480 ^STATEMENT OF KRISTINE SVINICKI

481 } Ms. {Svinicki.} Thank you, Chairman Whitfield, Ranking
482 Member Rush, Chairman Shimkus, Ranking Member Tonko, Chairman
483 Upton and distinguished members of the subcommittees for the
484 opportunity to appear before you today at this oversight
485 hearing to examine NRC policy and governance.

486 Since the Commission appeared before you last summer,
487 NRC has continued its important and diverse activities
488 related to oversight and licensing of nuclear power plants,
489 research, test and training reactors, nuclear fuel cycle
490 facilities, medical, industry and academic uses of
491 radioactive materials, and the transport, storage and
492 disposal of radioactive materials and waste. Of these many
493 diverse responsibilities, I will highlight two of current
494 focus.

495 The NRC continues to oversee industry compliance with
496 the cybersecurity regulations that NRC put in place in 2009
497 to protect critical digital assets at nuclear facilities.
498 Working cooperative with the Federal Energy Regulatory

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499 Commission, the North American Electric Reliability
500 Corporation, the Department of Homeland Security and other
501 organizations, we continue to monitor and help combat the
502 cyber threats to our Nation.

503 In the area of small modular reactors, the NRC continues
504 its work to identify and resolve policy and licensing issues
505 related to adapting our regulatory framework, which was
506 developed for large light water reactors, to the diverse
507 designs and approaches put forth by the small modular reactor
508 community of developers. NRC policy encourages early
509 discussion prior to submission of a license application
510 between NRC agency staff and potential applicants in public
511 meetings. These discussions enable the NRC staff to identify
512 and resolve potential issues early in the process. These
513 efforts will continue and will take more specific form as the
514 U.S. Department of Energy advances its SMR program activities
515 this year and next.

516 All of these activities are achieved through the
517 committed efforts of the women and men of the NRC who work to
518 advance the NRC's mission of ensuring adequate protection of
519 public health and safety and promoting the common defense and

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520 security day in and day out. I am grateful to them for the
521 work they do.

522 I appreciate the opportunity to appear and look forward
523 to your questions. Thank you.

524 [The prepared statement of Ms. Svinicki follows:]

525 ***** COMMITTEE INSERT *****

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|
526 Mr. {Shimkus.} Thank you, and now the Chair recognizes
527 Commissioner Apostolakis for 2 minutes.

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|
528 ^STATEMENT OF GEORGE APOSTOLAKIS

529 } Mr. {Apostolakis.} Chairman Whitfield, Ranking Member
530 Rush and members of the subcommittees, good morning.

531 At the 2-year anniversary of the accident at Fukushima,
532 the NRC and the nuclear industry have made significant
533 progress in addressing lessons learned. Decisions on nuclear
534 safety matters should not be made without careful
535 deliberation. Such deliberation includes the technical
536 evaluations by NRC senior management, the views of the
537 statutory advisory committee in regard to safeguards, and
538 public interactions with external stakeholders.

539 As a result of this open and transparent process, the
540 technical basis for implementing the Near-Term Task Force
541 recommendations was strengthened. Additional technical
542 issues for consideration were identified in such areas as
543 filtration of containment vents, loss of the ultimate heat
544 sink, and the expedited transfer of spent fuel to dry casks
545 to cask storage.

546 The process for reaching post-Fukushima decisions has

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547 been and continues to be methodical and transparent. This
548 decision-making process has highlighted the potential tension
549 between implementing new safety enhancements and maintaining
550 regulatory stability. Our own Principles of Good Regulation
551 state that NRC regulation should be perceived to be reliable
552 and not unjustifiably in a state of transition. The agency
553 will continue to face the challenge of striking the right
554 balance between safety enhancements and regulatory stability.

555 In closing, I note that there are many other safety
556 improvements being made at nuclear power plants that are not
557 related to Fukushima. These also require significant
558 resources to implement. It is a challenge to ensure that
559 additional new requirements do not adversely affect the
560 implementation of more safety significant activities or our
561 licensees' ability to maintain their focus on day-to-day safe
562 operation. Thank you.

563 [The prepared statement of Mr. Apostolakis follows:]

564 ***** COMMITTEE INSERT *****

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|

565 Mr. {Shimkus.} Thank you, Commissioner.

566 Now, Commissioner Magwood, you are recognized for 2

567 minutes.

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|
568 ^STATEMENT OF WILLIAM D. MAGWOOD, IV

569 } Mr. {Magwood.} Thank you, and good morning. Chairman
570 Shimkus, Ranking Member Tonko, Chairman Whitfield and Ranking
571 Member Rush, Chairman Upton and distinguished members of the
572 subcommittees, it is a pleasure to appear before you today to
573 discuss the activities of the Nuclear Regulatory Commission.

574 Two years after the massive earthquake struck
575 northeastern Japan that precipitated the disaster at the
576 Fukushima plant, responding to these important lessons of
577 that event remains a very high priority for our agency.
578 While we continue to work with our Japanese friends and the
579 international community to study the sequence of events at
580 Fukushima to mine this tragedy for information that will help
581 prevent future disasters, we have already learned the highest
582 priority lessons.

583 We understand that we must change the way we think about
584 extreme events, what we in our business call beyond-design-
585 basis events. These events are rare but can result in very
586 high consequences. Fukushima has led to new thinking

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587 regarding how U.S. facilities should prepare for these
588 occurrences.

589 From Fukushima, we understand it is possible for a
590 nuclear plant to experience the loss of both offsite power
591 and onsite emergency diesel generators as a result of a
592 single event. We have also seen the unanticipated challenges
593 associated with the failure of multiple reactors at a single
594 site.

595 This Commission has led our agency to aggressively
596 respond to these new learnings. We have issued orders to
597 address these issues and many more. I believe that the great
598 majority of risk revealed in the aftermath of Fukushima has
599 been addressed by the actions we have taken thus far.
600 Nevertheless, more work remains both in implementing success
601 of the decisions we have already made, and to address
602 remaining important issues such as the improvements that can
603 be considered regarding containment of venting systems for
604 mark I and mark II boiling-water reactors.

605 My colleagues and I have had many spirited, open
606 discussions and debates over these matters, and we have all
607 spent countless hours with the excellent NRC staff as we work

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608 to find the best solutions to these difficult issues and
609 assure the health and safety of the American people.
610 Meanwhile, the regular work of our agency continues. As our
611 work continues, we appreciate your strong interest that you
612 have demonstrated in our activities and the ongoing efforts
613 that we have in becoming a stronger, more effective and more
614 open nuclear safety regulator.

615 Thank you, and I look forward to your questions.

616 [The prepared statement of Mr. Magwood follows:]

617 ***** COMMITTEE INSERT *****

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|

618 Mr. {Shimkus.} Thank you.

619 The Chair now recognizes Commissioner Ostendorff for 2

620 minutes.

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|
621 ^STATEMENT OF WILLIAM C. OSTENDORFF

622 } Mr. {Ostendorff.} Chairman Shimkus, Chairman Whitfield,
623 Ranking Member Rush, thank you for the chance to be here
624 today.

625 As we approach the 2-year anniversary of the Fukushima
626 Daishi event, I think that we are making very good progress
627 at our agency in implementing previous actions in response
628 looking at what needs to be done and what does not need to be
629 done.

630 Along with all my colleagues here at this table, I know
631 that we seriously take our responsibilities in making sure
632 that we do not impose additional requirements without there
633 being a strong justification. I firmly believe as a
634 Commissioner that we are doing just that.

635 With respect to other work, safety performance of our
636 licensees remains very good. When deficiencies are
637 identified, we enhance our level of oversight and we ensure
638 appropriate corrective actions are taken.

639 We are also effectively providing construction oversight

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640 of new reactors in Georgia in South Carolina and are promptly
641 addressed in the waste confidence remand from the D.C.
642 Circuit Court of Appeals.

643 I appreciate this committee's oversight role and I look
644 forward to your questions.

645 [The prepared statement of Mr. Ostendorff follows:]

646 ***** COMMITTEE INSERT *****

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|
647 Mr. {Shimkus.} Thank you. You get the prize,
648 Commissioner Ostendorff. I would like to now begin our
649 opening round of questions. I will recognize myself for the
650 first 5 minutes.

651 As you all know, we are still waiting for a decision
652 from the D.C. Circuit Court on whether the NRC is legally
653 bound to resume consideration of the Yucca Mountain license
654 application. Chairman Macfarlane, last July when you last
655 testified before this committee, I asked you if you would
656 honor the court's decision, and you said, and I quote,
657 ``Absolutely.'' Do you still stand by that statement?

658 Ms. {Macfarlane.} Absolutely.

659 Mr. {Shimkus.} To the rest of the Commissioners, will
660 you also commit to honor the court's decision?

661 Ms. {Svinicki.} Yes, I do.

662 Mr. {Apostolakis.} Yes.

663 Mr. {Magwood.} Yes.

664 Mr. {Ostendorff.} Yes.

665 Mr. {Shimkus.} Our investigation last year uncovered an
666 estimate by NRC staff indicating that the Yucca Mountain

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667 Safety Evaluation Report could be completed in 6 to 8 months.
668 The Safety Evaluation Report would document the NRC's review
669 and conclusions regarding the license application. In
670 answers to questions following our last hearing, the NRC
671 stated the cost would be approximately \$6.5 million. The
672 NRC's Performance and Accountability Report issued 2 weeks
673 ago states that the NRC currently has \$10.4 million in
674 unobligated balances from the Nuclear Waste Fund for the
675 purpose of reviewing the license application, and this is to
676 all five Commissioners: Having committed to honor the
677 court's decision, if the court orders the NRC to resume its
678 review of the license application, will you commit to
679 ensuring that staff will complete the review and publicly
680 release the Safety Evaluation Report in accordance with these
681 time and resource estimates? Chairman?

682 Ms. {Macfarlane.} Well, I will first wait to see what
683 the court's decision is and then I will wait to see the
684 analysis of the available funds.

685 Mr. {Shimkus.} So you don't believe that you have \$10.5
686 million in unobligated accounts in the NRC?

687 Ms. {Macfarlane.} We do. Whether it is released or not

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688 is another issue.

689 Mr. {Shimkus.} And you don't agree that you responded
690 in your last appearance here that there was \$6.5 million in--
691 well, it was the projected cost.

692 Ms. {Macfarlane.} I agreed to that.

693 Mr. {Shimkus.} And you have agreed that if the court
694 decides to move forward that you as the Chairman of the
695 Commission would do so?

696 Ms. {Macfarlane.} Yes.

697 Mr. {Shimkus.} Okay. Thank you. Same question to you,
698 Commissioner Svinicki?

699 Ms. {Svinicki.} Mr. Chairman, the figures that you
700 mentioned, I believe are correct. I do not know if the NRC
701 staff would need to update the cost estimate for completing
702 and issuing the SERs. The longer the duration of the
703 suspension of their activities, it may be that reconstituting
704 their work would have a higher price tag than that, but of
705 course, any direction to the staff will be deliberated
706 amongst the Commissioners, but as an individual member of the
707 Commission, I do believe there would be value in completing
708 that work.

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709 Mr. {Shimkus.} Thank you. Commissioner Apostolakis?

710 Mr. {Apostolakis.} I agree with Commissioner Svinicki.

711 Mr. {Shimkus.} Great. Commissioner Magwood?

712 Mr. {Magwood.} Yes, I would echo that as well, and also
713 add that I think we also would require some additional
714 guidance from Congress on that to assure we apply the money
715 correctly, but with all those constraints, absolutely.

716 Mr. {Shimkus.} And Commissioner Ostendorff?

717 Mr. {Ostendorff.} I agree there is value in moving
718 forward to complete the SERs and publicly issue those
719 documents irrespective of what the long-term siting of the
720 repository may be.

721 Mr. {Shimkus.} And final question. If the court issues
722 such an order, will you commit to provide this committee with
723 monthly reports on the staff's progress and expenditures of
724 resources?

725 Ms. {Macfarlane.} Yes.

726 Mr. {Shimkus.} Commissioner Svinicki?

727 Ms. {Svinicki.} Yes.

728 Mr. {Apostolakis.} Yes.

729 Mr. {Magwood.} Yes.

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730 Mr. {Ostendorff.} Yes.

731 Mr. {Shimkus.} Thank you very much. Now the Chair
732 recognizes the gentleman from New York, Mr. Tonko, for 5
733 minutes.

734 Mr. {Tonko.} Thank you, Mr. Chair.

735 Last March, the Commission issued three orders to United
736 States commercial nuclear reactors to enhance safety in the
737 wake of the Fukushima disaster. One of the orders is
738 focusing on boiling-water reactors, similar to the type used
739 in Fukushima. The Indian Point nuclear facility south of my
740 Congressional district uses this type of reactor. NRC is
741 requiring these reactors to install hydrogen venting systems
742 that would be reliable and operable under emergency
743 conditions. That seems like common sense, and in fact, today
744 is the deadline for operators to submit their plans for
745 implementing these orders to the NRC.

746 Chairman Macfarlane, these reactors have until the end
747 of 2016, I believe, at the latest, to execute these plans.
748 Is that correct?

749 Ms. {Macfarlane.} To execute the--I believe that is
750 correct.

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751 Mr. {Tonko.} That is more than 5 years after the
752 Fukushima accident for only three orders. The post-Fukushima
753 task force made many additional recommendations for how to
754 improve reactor safety. Chairman Macfarlane, how long will
755 it take, in your opinion, to implement all of the Fukushima
756 task force's recommendations?

757 Ms. {Macfarlane.} This is an issue that we are looking
758 at, and we are trying to--we are evaluating a number of these
759 recommendations going forward. As you know, we have
760 prioritized them into three tiers. The first tier were the
761 activities that could be conducted immediately without
762 further study, and now we are evaluating the tier two and
763 tier three activities to see if there is reason to go forward
764 with them, but we are doing it with all due deliberation.

765 Mr. {Tonko.} I appreciate that, but I believe it is
766 important to maintain a sense of urgency in the
767 implementation of the lessons learned from Fukushima. As
768 time passes, we tend to lose focus, but the hazards don't
769 become any less real over the course of time.

770 I want to also ask you about another issue that seems
771 like common sense, and that is whether NRC should require the

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772 installation of filters on these hydrogen vents in order to
773 reduce the amount of radiation released into the outside air
774 in the event of a severe accident. NRC's technical experts
775 recommended that the Commission require filtered vents. Some
776 members of this committee have raised concerns that this
777 requirement would be too costly. Chairman Macfarlane, my
778 understanding is that the NRC staff did a full cost-benefit
779 analysis examining both quantitative and qualitative factors.
780 Is that correct?

781 Ms. {Macfarlane.} That is correct.

782 Mr. {Tonko.} And there is nothing unusual about looking
783 at qualitative factors. Is that correct?

784 Ms. {Macfarlane.} That is correct.

785 Mr. {Tonko.} As consistent with NRC's guidance on cost-
786 benefit analyses?

787 Ms. {Macfarlane.} Yes.

788 Mr. {Tonko.} Okay. Well, based on its analysis, NRC
789 staff determined that requiring filtered vents would be cost-
790 justified and would indeed increase safety. Is that correct?

791 Ms. {Macfarlane.} That is the staff's analysis.

792 Mr. {Tonko.} I know you are currently voting on this

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793 issue.

794 Ms. {Macfarlane.} We are.

795 Mr. {Tonko.} And I respect that process. I believe
796 that you need to work together to come to a conclusion on
797 this issue, but I would encourage you to resist outside
798 pressure to disregard the expert recommendations of your
799 staff. I think it is imperative. I think it is important
800 that we move forward having learned from the lessons of
801 Fukushima, and it is important for us to maintain a sense of
802 safety with all of our nuclear activity across the country.

803 So with that, I thank you, and Mr. Chair, I yield back.

804 Mr. {Shimkus.} The gentleman yields back his time. The
805 Chair now recognizes the chairman of the full committee, Mr.
806 Upton, for 5 minutes.

807 The {Chairman.} Well, again, thank you, Mr. Chairman,
808 and I do appreciate, as I said in my opening statement, your
809 particular concern as we all share with my particular plant
810 in my district, the Palisades plant, and it is in the
811 interest of all that that Palisades plant be returned to
812 column 1, which it was. I appreciated you keeping us
813 updated. And as I indicated in my opening statement, and you

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814 indicated as well, that you are going to apply increased
815 oversight beyond the normal inspections for that particular
816 facility. Can you elaborate at all in terms of how long that
817 might last, what progress we have seen since you indicated
818 such a number of weeks ago?

819 Ms. {Macfarlane.} Sure. The increased oversight is a
820 result of degradation in safety culture that we observed at
821 the Palisades plant, and they had a few other issues but this
822 was the issue that prompted the increased oversight, and we
823 are going to continue with the increased oversight to ensure
824 that the positive changes that we have seen at the Palisades
825 site in safety culture hold, and we will continue that for a
826 while as long as we are convinced that changes have
827 permanently taken place at the plant, and this is completely
828 normal and this is what we do with other plants. We are not
829 singling out Palisades in any particular manner, and it is
830 all moving in a very positive direction.

831 The {Chairman.} I appreciate that, and I appreciate
832 your leadership, and I just want to extend an invitation. In
833 my district, I have two facilities that are literally 10
834 miles north of where I live and 10 miles south, and it would

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835 be an easy trip for you perhaps to come visit both on
836 literally the same day, so I appreciate your leadership and I
837 yield back.

838 Mr. {Shimkus.} The gentleman yields back his time. The
839 Chair now recognizes the ranking member of the Energy and Air
840 Quality Subcommittee, Mr. Rush, for 5 minutes.

841 Mr. {Rush.} I want to thank you, Mr. Chairman.

842 Chairwoman Macfarlane, I am going to switch the focus
843 again from some of the nuclear-centered anxieties that are
844 prevalent on this committee, and I want to focus on what I
845 consider one of your strengths.

846 In my opening statement, I remarked that I was pleased
847 to see the NRC being honored as one of the governmental
848 agencies that was most supportive of the engineering
849 departments at HBCUs in 2012, and I think that is an issue
850 that really we need some airing on and hearings of this type,
851 and that is the issue of getting more students to go into the
852 STEM fields so that they can be the engineers and scientists
853 of the future, and I want to commend your agency again for
854 its outstanding achievement.

855 The ATI recently released a report that half of this

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856 industry will turn over in the next 7 to 10 years and it is
857 in our national security interests that we make sure that we
858 train young people to become scientists and engineers and
859 that they have the skills and the expertise that is necessary
860 to replace this aging workforce. Can you provide this
861 committee with more information on programs, what forms of
862 support the NRC provides to these HBCUs and do you think that
863 these types of programs can be replicated at other agencies?

864 Ms. {Macfarlane.} We can certainly provide a list in
865 writing on these programs, and I think these programs are
866 very important. Coming from an academic background myself, I
867 find it very important and I have been getting briefed from
868 the staff on all the range of programs that we have. We have
869 some very important programs to not only encourage students
870 to go into these fields but also to make sure there are
871 faculty there to teach the students, and I think that is an
872 important piece of this as well. So these are very important
873 programs. I don't know if my colleagues would like to
874 comment.

875 Mr. {Rush.} Anybody?

876 Mr. {Magwood.} Sure, Congressman, just a quick comment.

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877 I agree with Commissioner Macfarlane. I think these
878 activities are very important, and it is not simply programs
879 aimed at HBCUs obviously. It is really the broader academic
880 community. And NRC has a unique role to play because it is
881 not just simply the dollars that we put into this, it is also
882 a lot of our staff who are very interested in these programs
883 and serve as champions for various universities across the
884 country where they travel and I travel quite frequently to
885 visit students and talk to students about careers in science
886 and technology, and of course, particularly nuclear science
887 and technology.

888 In the area of Minority-Serving Institutions program, I
889 think the biggest portion of the program is what we would
890 call capacity building, building the ability of these
891 universities to compete on a more equal basis with larger
892 universities for research dollars and other types of grants,
893 so it is something that we are very proud of.

894 Mr. {Rush.} Ms. Macfarlane, the NRC Principles of Good
895 Regulation state, and I quote, ``Regulatory activity should
896 be consistent with the degree of risk reduction they achieve.
897 Where several effective alternatives are available, the

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898 option which minimizes the use of resources should be
899 adopted,' and ``Once established, regulations should be
900 perceived to be reliable and not unjustifiably in a state of
901 transition.'' What specific measures do you employ to ensure
902 that the NRC's regulatory process provides sufficient
903 flexibility to satisfy these principles while ensuring a
904 predictable and stable regulatory regime?

905 Ms. {Macfarlane.} We operate a number of different
906 processes to ensure that there is a stable regulatory regime,
907 and we work closely with industry and other stakeholders to
908 ensure that we are going forward and we are sensitive to
909 issues that come up.

910 Mr. {Rush.} Mr. Chairman, I yield back.

911 Mr. {Shimkus.} The gentleman yields back his time. The
912 Chair recognizes the chairman of the Energy and Air Quality
913 Subcommittee, Mr. Whitfield, for 5 minutes.

914 Mr. {Whitfield.} Thank you, Chairman Shimkus, and thank
915 you all for your statements.

916 In my opening statement, I talked about the Near-Term
917 Task Force recommendation number one concerning the defense-
918 in-depth philosophy, the Severe Accident Management Order,

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919 the filtered-vents proposal, and the economic consequences
920 proposal, and I noticed that after last July's hearing,
921 Commissioner Ostendorff, you submitted answers to some
922 questions we had submitted in which you supported an
923 integrated, prioritized assessment of the Near-Term Task
924 Force recommendations, and as I said in my opening statement,
925 all of these issues seem to be so intertwined and yet there
926 seems to be an effort at the Commission to do them
927 independent and separate of each other. Would you give me
928 your views on this issue?

929 Mr. {Ostendorff.} Thank you very much, Chairman
930 Whitfield, for the question. It is a very important
931 question.

932 My personal views on this are as follows, that there may
933 be some externally who would criticize the NRC staff for the
934 sequencing of these four issues that you just raised. I take
935 a different view, and I will tell you that amongst the five
936 of us when we meet in periodic meetings several times a month
937 one-on-one, we discuss this exact issue. I would fear that
938 for us to go back and tell our Executive Director for
939 Operations go back and sequence this in the way that you

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940 think it is appropriate, that we would be inappropriately
941 delegating our own policy decision-making authority to our
942 staff. I think it is incumbent upon us as decision makers to
943 take that integration and prioritization function on these
944 key policy issues and deal with them as a Commission-level
945 decision, not a staff decision.

946 So for instance, if I could just add, in our economic
947 consequences vote, and nothing wrapped up but we have all had
948 lots of discussions on this, filtered-vents vote, I think you
949 will see when those votes are released for our processes,
950 there has been significant consideration for the
951 interconnection of these issues.

952 Mr. {Whitfield.} Would any of the other Commissioners
953 like to make a comment?

954 Ms. {Svinicki.} Yes, Chairman Whitfield. I agree with
955 Commissioner Ostendorff. I would add that I think since our
956 responses last summer, individually and as a Commission, we
957 are trying to strike a balance between, as Congressman Rush
958 just read, our commitment to a principle that the entire
959 regulatory framework not be unjustifiably in a state of
960 transition and the need to disposition some of these measures

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961 which have been under evaluation. So we are attempting to
962 integrate as well as we can but at the same time, if issues
963 are held open even longer, we contribute to this state of
964 transition for the regulatory framework. So as we discuss
965 with each other and we feel we are able, if we can
966 disposition an individual issue, we think that getting that
967 stabilized is beneficial.

968 Ms. {Macfarlane.} Let me add that I agree with both of
969 my colleagues on this issue, and we have been discussing it
970 on a very regular basis, but I think what we are also
971 benefiting from as the staff does more analysis is more
972 information to help us really understand all the issues that
973 are at play and exactly how we can deal with the overlap or
974 the lack of overlap, depending on the particular issue. So
975 we are giving this due consideration, please be assured.

976 Mr. {Whitfield.} Yes, sir?

977 Mr. {Apostolakis.} Well, in addition to what my
978 colleagues said, there is one other element that plays a role
979 in our decision-making process, and that is how long it would
980 take to implement one of those recommendations. Ideally and
981 logically, recommendation one should be the first one to deal

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982 with, but recommendation one requires time, it requires
983 rethinking of the regulatory system, so I don't think any one
984 of us would want us to still be working on recommendation one
985 without doing anything else. So there are other actions that
986 we can take, and it is not an ideal situation, but again,
987 there is this time pressure too, that we do want to do
988 something, and recommendation one will have to wait for a
989 while.

990 Mr. {Whitfield.} Mr. Magwood?

991 Mr. {Magwood.} Not to be the only one to stay silent on
992 the issue, I guess I will have to make some comment. I think
993 that the outcomes that we have been able to generate I think
994 have been good, and that is not to say that we could not have
995 had a more, I guess I should say a more coordinated approach
996 to how these issues were sequenced and how we approach them,
997 but to be honest, a lot of these issues have evolved a bit
998 while we have been working on them. You know, we have merged
999 some of the issues together so that they aren't independent
1000 decisions anymore. So our understanding of how to approach
1001 this has changed as we have gone forward. So it is easy to
1002 look backwards and say well, I wish we could have done it

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1003 this way, but I think the progress we have made so far has
1004 been so positive that I am hesitant to be overly critical of
1005 the fact that I would have liked to have seen one decision
1006 come before another.

1007 Mr. {Whitfield.} Well, thank you all so much for
1008 talking about it. Thank you.

1009 Mr. {Shimkus.} The chairman's time has expired. The
1010 Chair now recognizes the ranking member of the full
1011 committee, Mr. Waxman, for 5 minutes.

1012 Mr. {Waxman.} Thank you, Mr. Chairman.

1013 Chair Macfarlane, I would like to start by asking you
1014 about the problems with San Onofre. I mentioned it in my
1015 opening statement. The nuclear generating station is located
1016 near San Diego. In 2010 and 2011, new steam generators were
1017 placed in service at that plant. The project cost California
1018 ratepayers \$670 million but the new equipment was supposed to
1019 last for decades. However, since January 31 of last year,
1020 both reactors have been shut down after a tube in one of the
1021 steam generators started leaking radioactive steam into the
1022 atmosphere. When you last testified before the committee,
1023 all five Commissioners agreed that this is a serious safety

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1024 issue that must be corrected before the plant restarts. The
1025 operator of the plant, Southern California Edison, is now
1026 proposing to run one of the units at 70 percent of power for
1027 5 minutes. I know that NRC staff is evaluating that
1028 proposal.

1029 Chairman Macfarlane, would running a plant at less than
1030 full power for an extended period of time normally require an
1031 amendment to the plant's operating license?

1032 Ms. {Macfarlane.} You know, we are in the process of
1033 evaluating the proposal by Southern California Edison for
1034 their restart, and we are also evaluating whether they
1035 understand the root cause of the problem with the steam
1036 generators, and let me assure you first of all, that we will
1037 not let the plant operate until we are assured that it can
1038 operate 100 percent safely.

1039 Mr. {Waxman.} But my question is--and I thank you for
1040 that comment--is that if they are going to run this plant at
1041 less than full power, don't they require an amendment to the
1042 plant's operating license?

1043 Ms. {Macfarlane.} I think this is in a judicatory space
1044 right now and so I can't comment on that particular issue.

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1045 Mr. {Waxman.} NRC didn't detect the flaws in the
1046 generators before they were turned on. That raises important
1047 questions. How did this happen? How do we make sure it
1048 doesn't happen again? What progress has NRC made in
1049 answering these outstanding questions?

1050 Ms. {Macfarlane.} The process for changing out steam
1051 generators at plants--and this has been done at 65 plants
1052 across the country, 65 reactors. We have done this over and
1053 over. It has been a fairly straightforward process. So the
1054 situation at San Onofre is somewhat unique. But nonetheless,
1055 we are going back and evaluating whether we have the right
1056 procedures in place when these big pieces of equipment are
1057 changed. So this is an active area.

1058 Mr. {Waxman.} And how long do you figure this is going
1059 to take?

1060 Ms. {Macfarlane.} That what is going to take?

1061 Mr. {Waxman.} This evaluation to know what NRC didn't
1062 do and should have done and will do in the future.

1063 Ms. {Macfarlane.} I am not sure, but we are in the
1064 process of determining lessons learned, and we will really
1065 move on with lessons learned once this situation with San

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1066 Onofre is completed.

1067 Mr. {Waxman.} I want to turn to the issue of climate
1068 change and its impact on nuclear power plants. For years,
1069 scientists have warned that climate change will bring more
1070 extreme weather and flooding, more heat waves and droughts.
1071 We are now experiencing impacts consistent with these
1072 predictions.

1073 Chairman Macfarlane, what is NRC doing to ensure that
1074 our Nation's nuclear plants can operate safely not only in
1075 the current climate but in a warmer climate with more extreme
1076 weather? There are indications that climate change is
1077 already having a harmful impact on the nuclear sector. Last
1078 August, Dominion Power was forced to shut down a nuclear
1079 reactor at its Millstone Power Station in Connecticut because
1080 the power it needs to cool its reactor became too warm.

1081 Ms. {Macfarlane.} Yes, I appreciate that question. I
1082 think it is important for us to evaluate all external hazards
1083 including those that may be posed by climate change, but I
1084 think the Fukushima accident showed us that we need to be
1085 aware of recent information in terms of earthquake activity,
1086 tsunami, etc. So we need to be prepared for all of that, and

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1087 in fact, we are moving in that direction right now. In the
1088 tier one activities from the Fukushima follow-on, we have
1089 asked plants to reevaluate both the seismic and flooding
1090 hazard, and the flooding hazard is a broad hazard. It can be
1091 from riverine flooding from too much rain, from coastal storm
1092 surge, as we saw during Hurricane Sandy, even from tsunamis.
1093 And then as we move through our other--

1094 Mr. {Waxman.} Are you aware of other instances of
1095 nuclear plants shutting down or curtailing their output as a
1096 result of cooling water they depend on becoming either too
1097 warm or too scarce?

1098 Ms. {Macfarlane.} Yes. If it becomes their licensing
1099 basis, they do have to shut down.

1100 Mr. {Waxman.} The Tennessee Valley Authority has to
1101 curtail its output of its Browns Ferry nuclear reactors in
1102 Alabama during the summers of 2010 and 2011 because the
1103 temperature of the river used for cooling waters became too
1104 hot. Exelon Corporation had to receive special permission
1105 from regulators last summer to continue to operate its
1106 Braidwood reactors in Illinois when their cooling water
1107 pond's temperature reached 102 degrees.

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1108 The impact of climate change on our Nation's nuclear
1109 power plants are real and happening now, and I think it is
1110 even going to get worse in the future. Thank you very much.

1111 Mr. {Shimkus.} Thank you. The gentleman yields back
1112 his time. The Chair now recognizes the chairman emeritus
1113 from the full committee, Mr. Barton, for 5 minutes.

1114 Mr. {Barton.} Thank you, both chairmen and ranking
1115 members of the subcommittees for holding this hearing. It is
1116 very decent of the full Commission to come before the two
1117 subcommittees.

1118 Madam Chairwoman, several months or maybe a month ago,
1119 myself and 20 other members sent you a letter asking some
1120 kind of general policy questions. One of the questions we
1121 asked was, when we could expect your Commission to conduct a
1122 full regulatory review between the Japanese system and the
1123 United States system, and in spite of some of the things that
1124 you said to member of this committee informally and in
1125 private conversation, you didn't answer that question, and I
1126 was a little bit surprised. I didn't think that was a trick
1127 question. Do you want to enlighten the committee why you
1128 were so nonresponsive to such a basic baseline question?

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1129 Ms. {Macfarlane.} Well, let me thank you for your
1130 question. I appreciate it, and I am sorry you found our
1131 answer wanting. And I will start off, and I will invite my
1132 colleagues to jump in, because it was a response from all of
1133 us collectively.

1134 Let me note first of all that operational experience is
1135 a foundational element in our work at the NRC, and the
1136 experiences at Fukushima represent experience that we need to
1137 learn from. We are of course aware of the situation with
1138 Japan and we are aware of the analyses that the Japanese have
1139 done themselves of the accident and their conclusions.
1140 Nonetheless, I think the accident pointed out a number of
1141 issues that are important for us to learn from. For
1142 instance, prior to the accident, we had not imagined that
1143 more than one reactor could melt down at a single facility.
1144 So it is imperative for us to now consider that in our
1145 regulatory analysis.

1146 Mr. {Barton.} Well, can we--

1147 Ms. {Macfarlane.} But let me invite my colleagues to
1148 comment.

1149 Mr. {Barton.} Let me just do a quick follow-up. Are

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1150 you willing to commit to the committee right now that you
1151 will conduct such a full regulatory review comparison and, if
1152 so, when might we expect that to be given to the committee
1153 and the public?

1154 Ms. {Macfarlane.} I think that we are working with all
1155 due deliberation, very carefully considering the lessons
1156 learned from the Fukushima accident and I think we are--

1157 Mr. {Barton.} That is not an answer to my question.
1158 You know, are you going to conduct a full regulatory review
1159 or not?

1160 Ms. {Macfarlane.} I am satisfied with the analysis and
1161 the progress that we are making at the agency.

1162 Mr. {Barton.} So you think you have already done it
1163 even though you have not--

1164 Ms. {Macfarlane.} I think we have done an adequate job,
1165 and we are--

1166 Mr. {Barton.} Does the rest of the Commission agree
1167 with that? That is a stunning statement if you all agree
1168 with that.

1169 Ms. {Svinicki.} Congressman Barton, if I may, predating
1170 Chairman Macfarlane's service on the Commission, as an

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1171 individual member, I did propose in a vote to my colleagues
1172 that the Commission direct the staff to conduct a regulatory
1173 comparison. This was in the months immediately preceding the
1174 event in Japan. In the process of working as a deliberative
1175 body, my proposal was scoped down to a comparison of station
1176 blackout requirements, and I respect the majority, so I
1177 appreciate that my colleagues and the Commission supported a
1178 partial comparison at that time.

1179 I continue to believe that a more complete comparison
1180 would be a good check for us even 2 years from the accident.
1181 It would allow us to be aware if we have any gaps that we
1182 have not yet addressed, and our direction to the staff arises
1183 from a majority vote.

1184 Mr. {Barton.} I am not trying to be argumentative but I
1185 don't see how you can decide what to do going forward if you
1186 really don't do a thorough review of the two regulatory
1187 systems that are currently in existence, or were in existence
1188 at that time.

1189 Mr. {Shimkus.} Would the gentleman yield?

1190 Mr. {Barton.} Sure.

1191 Mr. {Shimkus.} And our point is this. Collegiality is

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1192 great, but just signing a letter because that is the majority
1193 way instead of you have opposition and you have a better way
1194 to do it, stand your ground. We want you to be collegial.
1195 We want you to talk. But this letter and this response is
1196 unacceptable to this committee, and we would ask that we get
1197 it right and that you give us a thorough analysis of the two
1198 systems.

1199 Mr. {Barton.} I can assure you that most members of the
1200 committee on both sides of the aisle are not trying to
1201 sandbag the Commission. In fact, I would say to the
1202 contrary, we are your biggest allies. So to be
1203 nonresponsive, I won't say it is shocking because it is not
1204 the first time we have received such a nonresponse from a
1205 regulatory agency but it was disappointing.

1206 With that, I yield back.

1207 Mr. {Shimkus.} The gentleman's time is expired. The
1208 Chair now recognizes the other chairman emeritus of the full
1209 committee, Mr. Dingell, for 5 minutes.

1210 Mr. {Dingell.} Mr. Chairman, I thank you for your
1211 courtesy and commend you for this hearing.

1212 A yes or no question here. This is to the chairman. As

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1213 you know, the Yucca Mountain facility remains unused yet we
1214 are still generating nuclear waste at facilities across the
1215 country at a tremendous rate. Has the Commission considered
1216 whether the D.C. Circuit Court's 2012 decision and the lack
1217 of a permanent storage facility will affect the continuation
1218 of existing licenses or possibly invalidate them? Yes or no.

1219 Ms. {Macfarlane.} It won't invalidate existing
1220 licenses.

1221 Mr. {Dingell.} Now, if not, does the Commission plan to
1222 do so?

1223 Ms. {Macfarlane.} Sorry. Can you repeat the question?

1224 Mr. {Dingell.} If not, does the Commission plan to do
1225 so?

1226 Ms. {Macfarlane.} To invalidate existing licenses?

1227 Mr. {Dingell.} Well, what are you going to do? You
1228 have already said--you have given me an answer to the first
1229 part of the question. Does the Commission plan then to take
1230 any further action here such as terminating the use of the
1231 facility and reviewing or bringing to a halt the development
1232 of the nuclear power in the country?

1233 Ms. {Macfarlane.} Let me ask for clarification. Are we

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1234 talking about--

1235 Mr. {Dingell.} Please submit the answer in written

1236 form, and Mr. Chairman, I will submit questions to the

1237 Commission.

1238 Mr. {Shimkus.} Without objection, all members will be

1239 able to submit questions to the Commission for a response.

1240 Mr. {Dingell.} Now, Madam Chairman, would you submit

1241 then additional information on this subject for the record to

1242 the committee? I will be submitting to you an appropriate

1243 letter on this matter.

1244 Now, this is again yes or no. The nuclear industry has

1245 been ahead of many industries in cybersecurity efforts, and

1246 the Commission had robust cyber regulations already in place.

1247 Do you believe the Commission has the necessary authority and

1248 resources to do all you can to defend against cybersecurity

1249 threats and breaches and prepare for future threats? Could

1250 you answer this yes or no?

1251 Ms. {Macfarlane.} Yes.

1252 Mr. {Dingell.} Again, Mr. Chairman, I will be

1253 submitting some questions on this point for the record.

1254 Madam Chairman, in addition to the nuclear facilities

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1255 and the computer infrastructures that support them, nuclear
1256 facilities could potentially be disrupted through offsite
1257 attacks such as attacks on the mines or transportation or on
1258 other activities at the companies that manufacture parts. If
1259 reactor fuels, parts, equipment or other products are
1260 qualified to come on site, should the Commission have
1261 jurisdiction or input over cyber or physical protection
1262 before it comes on site? Yes or no.

1263 Ms. {Macfarlane.} We are beginning to look into this
1264 issue.

1265 Mr. {Dingell.} All right. And again, I will submit
1266 some questions on this.

1267 Madam Chairman, the Fukushima disaster obviously gave us
1268 a lot to think about when it comes to nuclear energy, and the
1269 Commission has put considerable thought into this matter.
1270 However, in a recent letter to the Commission, I joined my
1271 committee colleague, Mr. Barrow, for whom I have great
1272 respect, and others to express concern about a pending
1273 decision that may require a significant number of nuclear
1274 facilities to install containment filtered vents. The
1275 concern is, it may not be appropriate for the facilities your

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1276 decision may affect due to the differences in affected
1277 reactors. Would a case-by-case evaluation provide greater
1278 certainty the best technologies are being used rather than a
1279 broad approach such as a filtered-vent proposal? Yes or no.

1280 Ms. {Macfarlane.} I am sorry. I didn't get the
1281 question.

1282 Mr. {Dingell.} Well, I am running out of time.

1283 Ms. {Macfarlane.} The filtered-vents issue is still an
1284 active area of voting so I am not going to talk about it
1285 right now, with all respect to my colleagues.

1286 Mr. {Dingell.} Thank you. I will submit again
1287 questions on this. In regards to other Fukushima
1288 recommendations already put in place, please submit for the
1289 record why these were issued as orders and not through the
1290 rulemaking process. Why did you issue these as orders and
1291 not through the rulemaking process?

1292 Ms. {Macfarlane.} Because we felt that these particular
1293 activities were activities that needed to be accomplished
1294 very quickly. Rulemaking is a very time-consuming process,
1295 and in response to what we now know about what can happen at
1296 reactors based on the Fukushima accident--

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1297 Mr. {Dingell.} Now, they will be submitted rather
1298 imperfectly, and this is going to require further refinement
1299 by the Commission, is it no?

1300 Ms. {Macfarlane.} Yes. We are in rulemaking mode as
1301 well.

1302 Mr. {Dingell.} Madam Chairman, I submitted a question
1303 to you last year with regard to the status of an application
1304 by Aerotest Operations for an indirect license transfer to
1305 Nuclear Labyrinth. In your written response, you indicated
1306 that the Commission would request additional information from
1307 Aerotest. It is my understanding that such additional
1308 information has been submitted. Does the Commission
1309 anticipate requesting further information to Aerotest?

1310 Ms. {Macfarlane.} The information was submitted, I
1311 believe, this past January and it will take between 6 to 8
1312 months for us to review this.

1313 Mr. {Dingell.} Would you please submit for the record
1314 your timeline on this?

1315 And Mr. Chairman, I thank you for your courtesy.

1316 Mr. {Shimkus.} The gentleman's time is expired. The
1317 Chair now recognizes the gentleman from Georgia, Mr. Gingrey,

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1318 for 5 minutes.

1319 Dr. {Gingrey.} Mr. Chairman, thank you for the
1320 recognition. Since we are somewhat rushed for time--I think
1321 we have Floor votes coming up soon--let me get right to the
1322 questions, and I am going to go starting with Chairwoman
1323 Macfarlane, and I want each of the Commissioners to respond
1324 to this if you will.

1325 To me, it seems abundantly clear that this
1326 Administration unilaterally decided to ignore the Nuclear
1327 Waste Policy Act and indeed canceled Yucca Mountain, our
1328 Nation's only nuclear waste repository program.
1329 Subsequently, the Commission's waste confidence rule was
1330 vacated by the D.C. Circuit Court, which rebuked the
1331 Commission when it wrote, ``The Commission apparently has no
1332 long-term plan other than hoping for a geologic repository.''
1333 As a result, you have a 2-year moratorium now on issuing new
1334 plant licenses or renewals for existing plants. For each of
1335 the Commissioners, again, Chairwoman Macfarlane, I will start
1336 with you. Wouldn't simply following the law and
1337 reconstituting the Yucca Mountain program reestablish a basis
1338 for confidence that there will be a disposal path for spent

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1339 nuclear fuel?

1340 Ms. {Macfarlane.} This issue, the Yucca Mountain issue,
1341 is in the courts right now and we will await the decision of
1342 the courts and we will follow the law.

1343 Dr. {Gingrey.} Please.

1344 Ms. {Svinicki.} Yes, I believe that having clarity in
1345 both the language of the law and its implementation would
1346 allow the NRC to continue its licensing activities, which I
1347 suppose I am just observing that if the national policy for
1348 disposal of these materials is uncertain, then these types of
1349 legal complications such as waste confidence arise in our
1350 licensing activity.

1351 Mr. {Apostolakis.} I agree with Chairman Macfarlane.

1352 Mr. {Magwood.} I think it is quite evident that the
1353 fact that there is uncertainty in national policy created
1354 this situation we have with waste confidence, so I think the
1355 answer to your question obviously is yes, but I would also
1356 stress that I believe that our original waste confidence
1357 decision in 2010 was, in my view, and remains my view, was
1358 appropriate. So I still think that was a good waste
1359 confidence determination at the time despite the fact the

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1360 court didn't agree with me on that.

1361 Mr. {Ostendorff.} Congressman, I agree with
1362 Commissioner Magwood. I voted on that waste confidence
1363 decision when I first got to the Commission along with other
1364 colleagues here. I believe that we recognized it is the
1365 Department of Energy's responsibility under the Nuclear Waste
1366 Policy Act to establish a repository. We had good faith that
1367 they would follow that law. The law should be followed or
1368 amended.

1369 Dr. {Gingrey.} Mr. Chairman, I have a list of the
1370 licensing actions subject to the moratorium issued by the
1371 Commission. This is the list, Mr. Chairman, and I would like
1372 unanimous consent that this document be included in our
1373 record.

1374 Mr. {Shimkus.} Is there objection? Hearing none, so
1375 ordered.

1376 [The information follows:]

1377 ***** COMMITTEE INSERT *****

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1378 | Dr. {Gingrey.} Mr. Chairman, thank you.

1379 | On the third page of this document, listed are two
1380 | independent spent fuel storage installations. That is a
1381 | fancy word for interim storage, of which we have 68, as I
1382 | understand it, across the country, 68 different interim
1383 | storage facilities. So there are two that can't get their
1384 | existing license renewed because of this waste confidence
1385 | moratorium. There are some individuals that probably hope
1386 | that interim storage will fix the waste confidence problem,
1387 | but that looks like a catch-22 to me. Can each of you
1388 | comment, again, starting with the chairwoman, can each of you
1389 | comment on how interim storage can solve waste confidence if
1390 | you cannot license it because of the moratorium?

1391 | Ms. {Macfarlane.} First of all, let me point out that
1392 | the resolving of the waste problems is the purview of the
1393 | Congress and the Administration and not the Nuclear
1394 | Regulatory Commission. Our job is to ensure that any interim
1395 | storage facilities, any repositories, if so deemed by law, if
1396 | that is our role, then we--

1397 | Mr. {Shimkus.} If the gentleman would yield, it is the

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1398 law of the land, so just for the record, I think no one in
1399 the basic reading of the law would say that Yucca Mountain is
1400 not the law of the land.

1401 Ms. {Macfarlane.} Yes, I am not trying to say that
1402 Yucca Mountain is not the law of the land. I am just
1403 clarifying our role as regulators.

1404 Dr. {Gingrey.} Why don't we move along pretty quickly?
1405 I am running out of time and I would like to hear from each
1406 one of the Commissioners on this as well.

1407 Ms. {Svinicki.} Congressman, I would only observe that
1408 the Commission, I believe, has crafted a response to the
1409 adverse court decision, which is not dependent on legislative
1410 action. We have directed our staff to remedy and
1411 rehabilitate both the rulemaking and the environmental impact
1412 statement that the court found lacking. Once that activity
1413 is complete, our ability to issue licenses and the legal
1414 underpinning for that will be restored.

1415 Mr. {Apostolakis.} I agree.

1416 Mr. {Magwood.} Yes, I agree with Commissioner Svinicki.

1417 Mr. {Ostendorff.} I also agree.

1418 Dr. {Gingrey.} Mr. Chairman, my time is expired. I

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1419 yield back. Thank you.

1420 Mr. {Shimkus.} The gentleman's time is expired. The
1421 Chair recognizes the gentlelady from California, Ms. Capps,
1422 for 5 minutes.

1423 Mrs. {Capps.} Thank you, Mr. Chairman.

1424 Thank you all for your testimony, and Chairwoman
1425 Macfarlane, as we discussed before, Diablo Canyon Power Plant
1426 is located in my Congressional district. Diablo Canyon is
1427 the largest private employer in the area. PG&E, which
1428 operates the plant, does a lot of great work. I visited
1429 there several times over the years and I want to thank you
1430 for taking the time to visit the plant earlier this year.

1431 Now, we have known for a long time that this nuclear
1432 plants sits on the Hosgri earthquake fault. But in 2008, the
1433 U.S. Geological Survey discovered a new fault called the
1434 Shoreline fault. The Energy Commission recommended and our
1435 State PUC directed that the utility conduct independent peer-
1436 reviewed advanced seismic studies prior to applying for
1437 relicensing. As you know, PG&E asked to have the relicensing
1438 request paused pending completion of these studies, and NRC
1439 granted their request, and I supported that action.

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1440 PG&E came up with a plan for the studies but
1441 California's Coastal Commission rejected it last year due to
1442 environmental concerns. I was similarly concerned about
1443 these impacts on marine life, which is why I supported making
1444 it limited pilot program. But the health and safety of my
1445 constituents is my top priority, and I strongly believe that
1446 additional study of the fault is needed before the
1447 relicensing process can move forward. While I understand
1448 this effort has been driven by the State, I would hope the
1449 NRC would also want to have the best, most up-to-date
1450 information about this fault.

1451 Chairwoman Macfarlane, do you also agree that having
1452 additional independent data on the Shoreline fault would be
1453 helpful? And I would appreciate it if you just say yes or
1454 no.

1455 Ms. {Macfarlane.} Well, additional information can
1456 always be helpful but we can operate with the information
1457 that we have.

1458 Mrs. {Capps.} But you do agree that more information is
1459 a good thing?

1460 Ms. {Macfarlane.} I agree in general that more

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1461 information is a good thing.

1462 Mrs. {Capps.} Last October, the NRC published a
1463 research information letter claiming that Diablo Canyon is
1464 seismically safe, yet there are other scientific studies that
1465 seem to conflict with the NRC's report, and I am holding up
1466 one, USGS seismologist Dr. Jeanne Hardebeck, who discovered
1467 the Shoreline fault, just published an article in the peer-
1468 reviewed Bulletin of Seismology Society of America which
1469 says, and this is a quote: ``Much is unknown about the
1470 Shoreline fault.'' This raises concerns for me and my
1471 constituents that there are still unanswered questions about
1472 the seismic situation. So Chairwoman Macfarlane, how can we
1473 ensure that these questions and concerns are properly
1474 addressed?

1475 Ms. {Macfarlane.} Well, fortunately, right now there is
1476 an ongoing process. There is a committee called the Senior
1477 Seismic Hazard Assessment Committee that is actively
1478 evaluating the seismic situation at Diablo Canyon and they
1479 are in the middle of their process. We are observing this
1480 process and we are looking to see what the outcome is.

1481 Mrs. {Capps.} And the fact remains that another federal

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1482 scientist in a peer-reviewed study says more information is
1483 needed. So we clearly need to figure this out. I think we
1484 can agree that every angle must be thoroughly examined. NRC
1485 analysis needs to incorporate independent, concrete data that
1486 can be tested against those of seismic experts like Dr.
1487 Hardebeck. I think it makes sense to have the best eyes and
1488 minds in the country working together looking at these
1489 seismic issues because, actually, first and foremost, this is
1490 about safety. The NRC has the responsibility to make sure
1491 that Diablo Canyon is as safe as it can be today but also in
1492 the future, and I wanted the record to note that Diablo
1493 Canyon and the NRC have more than a decade to make these
1494 decisions because these licenses don't expire until a decade
1495 from now, so there is no rush, and we must work together to
1496 find a responsible way to gather and consider the additional
1497 data before relicensing moves forward.

1498 Chairwoman Macfarlane, I hope you share this commitment,
1499 and I look forward to working with the NRC to ensure that
1500 this process is done right. And for the record, I do have
1501 some additional questions for the Chairwoman and for other
1502 members of the panel but I am going to submit those for the

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1503 record, and I look forward to their response, but I do have
1504 45 seconds left and I want to know if there is another
1505 response that you would like to give now, or any of the other
1506 members of the Commission about this very urgent need at the
1507 nuclear facility in my Congressional district.

1508 Ms. {Macfarlane.} I think it is important that we make
1509 sure that these plants can operate safely, I agree with you,
1510 but I will offer my colleagues an option to comment.

1511 Mrs. {Capps.} All right. I yield back.

1512 Mr. {Shimkus.} The gentlelady yields back her time.
1513 The Chair recognizes the gentleman from Nebraska, Mr. Terry,
1514 for 5 minutes.

1515 Mr. {Terry.} Thank you, Mr. Chairman.

1516 Chairwoman Macfarlane, I represent Fort Calhoun, and you
1517 did mention Fort Calhoun in your written statement, so I want
1518 to follow up and ask a specific question regarding the NRC's
1519 relationship with the folks at Fort Calhoun and Omaha Public
1520 Power. I meet with them fairly regularly on the status of
1521 Fort Calhoun. I don't meet with you regularly on it. My
1522 question as a layman, reading the newspaper articles and
1523 hearing about their continuous meetings, what I am concerned

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1524 about is, it seems about every 6, 7 months, the NRC issues a
1525 new list of to-do things for that plant before it could
1526 reopen. So it appears to me as a layperson that the NRC may
1527 not have all of its organization skills applied here in the
1528 sense that it just seems like they get really close to being
1529 able to reopen and then all of a sudden they get this new
1530 list. Why and how does that happen?

1531 Ms. {Macfarlane.} I think we are working deliberately
1532 again, carefully with Fort Calhoun, and as you know, there
1533 were a number of issues that arose at the site, I think it
1534 was in 2011 , in the summer of 2011, first the flooding issue
1535 and then a fire.

1536 Mr. {Terry.} And the fire.

1537 Ms. {Macfarlane.} Right, and then there were a number
1538 of significant safety-culture issues. As you know, Omaha
1539 Power Public District has now contracted with Exelon to
1540 operate the site, so it is a matter of getting those Exelon
1541 folks in, reestablishing stability at the site and addressing
1542 the issues that exist.

1543 Mr. {Terry.} Are you familiar with Fort Calhoun and
1544 that process?

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1545 Ms. {Macfarlane.} Yes. I have not visited the site
1546 yet.

1547 Mr. {Terry.} You are speaking at a general level here.
1548 I already know about Exelon, and there was an additional
1549 punch list once the approval of Exelon had come in and helped
1550 with the management culture there, and as I understand the
1551 new punch list, it didn't really have much to do with the
1552 management aspect but physical things in that plant.

1553 Ms. {Macfarlane.} Right.

1554 Mr. {Terry.} And it just seems odd that those physical
1555 things were there a year and a half ago but they weren't on
1556 your list, and that gives me concern that, well, there is
1557 another agenda out there, at least questions like that. I
1558 just want to put that out there.

1559 Ms. {Macfarlane.} I understand your concern, and a
1560 couple of these issues have come up as a result of the
1561 licensee discovering of these issues. Some of them have to
1562 do with electrical penetrations into the containment
1563 building. There are a number of technical issues like this
1564 that the licensee noticed and therefore we are under
1565 obligation to ensure that these particular issues are

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1566 addressed. I invite my colleagues to--

1567 Mr. {Terry.} Well, I am going to go on to my next
1568 question. Because of your situation and incidences that
1569 occurred internally, we wrote a bill for reform of the NRC a
1570 couple years ago, 3657. Are you familiar with that bill?

1571 Ms. {Macfarlane.} I am familiar.

1572 Mr. {Terry.} It has not been reintroduced, comma, yet.
1573 So I am going to go down the list. Is everyone familiar with
1574 that bill? Ms. Svinicki?

1575 Ms. {Svinicki.} Yes.

1576 Mr. {Terry.} So one of the major parts of that is about
1577 the declaration of emergencies that seem to be one of the
1578 abuses that was identified. So do you believe that the
1579 Chairman should officially declare an emergency to the
1580 Commission and to Congress before assuming emergency powers?
1581 And I am going to go from you, Chairwoman, on down.

1582 Ms. {Macfarlane.} I think the Chairman should certainly
1583 consult with his or her colleagues when declaring an
1584 emergency.

1585 Mr. {Terry.} And to Congress?

1586 Ms. {Macfarlane.} And to Congress.

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1587 Ms. {Svinicki.} I think certainly members of the
1588 Commission need to be notified and there needs to be an
1589 official declaration.

1590 Mr. {Apostolakis.} Yes, I agree.

1591 Mr. {Magwood.} Yes, there should be an official
1592 declaration.

1593 Mr. {Magwood.} Yes.

1594 Mr. {Terry.} I have three more questions that I cannot
1595 ask in 17 seconds.

1596 Mr. Magwood, I just want to thank you for your strength
1597 during a difficult process before Chairman Macfarlane got
1598 there. So good job. Yield back.

1599 Mr. {Shimkus.} The gentleman yields back his time. The
1600 Chair recognizes the lady from Florida, Ms. Castor, for 5
1601 minutes.

1602 Ms. {Castor.} Thank you, Mr. Chairman. Good morning
1603 and thanks to the Commissioners for your testimony this
1604 morning.

1605 Over the past 5 years or so, certain ratepayers in
1606 Florida have struggled with the cost and uncertainty of the
1607 Crystal River nuclear power plant north of Tampa Bay. In

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1608 2009, the previous owner of the plant embarked on somewhat
1609 typical repairs to the plant but during those repairs the
1610 containment wall was seriously cracked, and the new owner
1611 announced earlier this month its intent to close the plant.
1612 That is the first closure of a nuclear power plant in
1613 Florida, the first major closure of a plant in the
1614 Southeastern United States. So I understand the utility and
1615 the NRC face two choices on how to decommission the plant.
1616 You can either decontaminate it quickly over time called
1617 decon under the NRC lingo or over 60 years, a process known
1618 as safe storage where the radioactivity decays over time.
1619 The utility announced that they are choosing the latter
1620 option. What is the role of the NRC? Do you agree with
1621 that? What analysis goes into those options? What is your
1622 role? Do you agree with that decision?

1623 Ms. {Macfarlane.} Those options are both options that
1624 are available under our regulatory framework. So a plant can
1625 decide to decommission immediately such as what was done at
1626 Maine Yankee or it can decide to put the plant in safe store
1627 for up to 60 years before finally decommissioning the site.
1628 So those are all available within our purview and our role is

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1629 to ensure that whichever path is chosen is carried out safety
1630 and securely.

1631 Ms. {Castor.} What are the pros and cons of--

1632 Ms. {Macfarlane.} I think that is in part up to the
1633 licensee to decide what the pros and cons are.

1634 Ms. {Castor.} So the NRC's role is not to provide
1635 direction? The rules provide that they can choose either
1636 option and then you provide oversight and input once that
1637 option is selected?

1638 Ms. {Macfarlane.} Correct.

1639 Ms. {Castor.} Because it is interesting that the
1640 estimates I have seen that decommissioning the plant quickly
1641 would cost under a billion dollars while safe storage over 60
1642 years could cost over \$6 billion. Does that sound correct in
1643 the ballpark?

1644 Ms. {Macfarlane.} I am not sure for the particular
1645 facility at Crystal River. I don't know, maybe my colleagues
1646 could comment.

1647 Ms. {Castor.} There is just a lot of sensitivity
1648 because in Florida, there was an advanced recovery fee and
1649 ratepayers have been on the hook for future construction.

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1650 They may be left on the hook for very significant sums of
1651 money for a plant that was never repaired and one that may
1652 not be built, alternative fuel, so that kind of cost-benefit
1653 analysis does not enter into your oversight responsibility?

1654 Ms. {Macfarlane.} No, that is a cost-benefit analysis
1655 that would be done by the licensee.

1656 Ms. {Castor.} Okay. So at this point once they have
1657 selected the safe store option, what kind of oversight do you
1658 provide on that process? What kind of input? How involved,
1659 what kind of staff requirements? Can you go into a little
1660 more detail on that, please?

1661 Ms. {Macfarlane.} We provide oversight to make sure
1662 that what remains of the facility remains in a safe and
1663 secure manner and so we will continually inspect it to make
1664 sure that that occurs.

1665 Ms. {Castor.} So continually how often are you in
1666 contact with the utility and how often are you on site?
1667 Maybe it will be necessary for you all to meet with me after
1668 the hearing to provide those details.

1669 Ms. {Macfarlane.} Sure. I am happy to go through the
1670 details of all of this so that you understand the whole

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1671 process.

1672 Ms. {Castor.} Does the impending sequester, across-the-
1673 board cuts through all government agencies, affect your
1674 ability on what you would plan to do on oversight of the
1675 decommissioning process at Crystal River?

1676 Ms. {Macfarlane.} No, it won't. We will ensure that
1677 our main mission, which is to ensure the operating facilities
1678 and decommissioned facilities, shutdown facilities, will
1679 remain safe and secure.

1680 Ms. {Castor.} Does it affect it at all?

1681 Ms. {Macfarlane.} No.

1682 Ms. {Castor.} Thank you very much. I yield back.

1683 Mr. {Shimkus.} The gentlelady yields back her time.

1684 The Chair now recognizes the vice chairman of the Energy and
1685 Air Quality Subcommittee, Mr. Scalise, for 5 minutes.

1686 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
1687 all of our panelists coming and engaging in this hearing.

1688 In a March 2011 information paper to the Commission, the
1689 NRC staff had cautioned that the cumulative effects of
1690 regulation ``can potentially distract licensee or entity
1691 staff from executing other primary duties that ensure safety

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1692 or security,' and, you know, I have looked at this
1693 cumulative effect risk and it seems valid.

1694 [Slide.]

1695 Mr. {Scalise.} If you can turn your attention to the
1696 slide on the screen, this is a timeline of the regulatory
1697 actions an average owner of four reactors would need to
1698 comply with. Clearly, this represents a lot of new
1699 requirements in addition to what we already expect of them
1700 every day to safely and reliably operate their plants.

1701 We raised this matter in our hearing last July, and the
1702 NRC's response was ``Process enhancements focus more on
1703 scheduling and less on reducing or scaling back
1704 requirements.'' We raised this issue again in our January
1705 15th letter, and the NRC's response was, ``The staff is
1706 currently working with industry to understand the impact of
1707 implementation dates,' and mentioned the timely development
1708 of guidance.

1709 So more regulation is not always safer. Sometimes it is
1710 just more things that they have to do that take away from
1711 their primary safety responsibility. I don't know how anyone
1712 can look at this slide and dismiss the cumulative impact of

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1713 regulations as merely a matter of scheduling, and I am told
1714 that in addition to this, there are approximately 40 more
1715 post-Fukushima items yet to be considered. Is that correct?

1716 Ms. {Macfarlane.} We are in the process of considering
1717 a number of post-Fukushima activities.

1718 Mr. {Scalise.} Do you know how many? I am told it is
1719 around 40. Is that an accurate assessment or do you know an
1720 exact number?

1721 Ms. {Macfarlane.} I think it is--

1722 Mr. {Scalise.} Higher or lower?

1723 Ms. {Macfarlane.} It is lower.

1724 Mr. {Scalise.} How much lower?

1725 Ms. {Macfarlane.} It depends on exactly how specific
1726 you want to get.

1727 Mr. {Scalise.} Well, if you know it is less than 40,
1728 than you know it is some number below that, so 30 maybe?

1729 Ms. {Macfarlane.} We will get back to you with the
1730 specific exact number for the record.

1731 Mr. {Scalise.} So you will get that back to the
1732 committee?

1733 Ms. {Macfarlane.} But that does not mean we will decide

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1734 to enforce all of those activities. Those are things that
1735 are under consideration.

1736 Mr. {Scalise.} Well, you know, and that is on top of
1737 what everybody is already expected to do, you know, and I
1738 guess that gets to a question of priorities. At some point
1739 if you are not going to enforce all of them, then you have
1740 got to establish some set of priorities, I would expect
1741 because--

1742 Ms. {Macfarlane.} We have.

1743 Mr. {Scalise.} You have that?

1744 Ms. {Macfarlane.} Yes, we have a set of priorities.

1745 Mr. {Scalise.} Do the people who operate all the
1746 reactors know what those priorities are that you are going to
1747 enforce?

1748 Ms. {Macfarlane.} Yes, they do.

1749 Mr. {Scalise.} And if you can get that to us as well.
1750 Can you do that?

1751 Ms. {Macfarlane.} Sure.

1752 Mr. {Scalise.} Because we all want the same thing. We
1753 want safety. We want the nuclear plants to be safe. But you
1754 have repeatedly indicated that our plants are safe and that

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1755 regulatory changes are often referred to as safety
1756 enhancements. So what I would like to know from the panel is
1757 how to seriously tackle the cumulative impacts of these
1758 regulations. Who would like to go first?

1759 Ms. {Macfarlane.} Well, we have been talking with
1760 industry on these issues. I know this is an area of concern
1761 for them, and we are concerned that we do not want to
1762 distract licensees from their main mission of ensuring safety
1763 at the facilities, of course. At the same time, I think it
1764 is our job to impose whatever requirements are needed to
1765 provide adequate protection of public health and safety.

1766 Mr. {Scalise.} But are you going to impose things that
1767 you yourself know you are not even going to enforce? I mean,
1768 is that really the responsible thing to do?

1769 Ms. {Macfarlane.} Everything we impose, we will
1770 enforce, of course. Let me ask my colleagues to comment
1771 because I think they would like to.

1772 Mr. {Apostolakis.} About 3 weeks ago, the Commission
1773 directed the staff to do two broad things. The first one is
1774 to propose ways of achieving these things, prioritization of
1775 new requirements or potential requirements with existing

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1776 requirements. For example, when we received the Fukushima
1777 report from the Near-Term Task Force, we just prioritized the
1778 Fukushima recommendations regardless of what else was going
1779 on. So now we are asking the staff to actually consider what
1780 else is going on in the future and give prioritization of
1781 everything. And second, we are asking the staff, directing
1782 the staff to come up with options for giving the licensees
1783 the option of arguing back why certain requirements they
1784 should delay because they are doing something else that is of
1785 more safety significance, and to do that.

1786 Mr. {Scalise.} And real quick--I apologize, I have got
1787 3 seconds left--I just want to ask when you are sending that
1788 list with 30 or whatever the number is going to be of those
1789 new items, does that include new regulatory guides, issuing
1790 new generic communications, using revised interim staff
1791 guidance, developing inspection findings, disposition of
1792 license, amendment requests? Are those what would be
1793 included in that list or would that be outside of that?

1794 Ms. {Macfarlane.} These are issues that are under
1795 consideration. These aren't decisions that we have made yet.

1796 Mr. {Scalise.} Okay. So as you get those, if you could

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1797 share those with us. Thank you very much. I yield back.

1798 Mr. {Shimkus.} The gentleman's time is expired. The

1799 Chair now recognizes the gentleman from California, Mr.

1800 McNerney, for 5 minutes.

1801 Mr. {McNerney.} Thank you, Mr. Chairman. So many

1802 questions, so little time.

1803 Commissioner Svinicki, how does the security of nuclear

1804 plants compare to conventional power plants with regard to

1805 cyber attacks?

1806 Ms. {Svinicki.} I would say that the NRC has some of

1807 the, I think, most specific and strongest regulations in the

1808 cyber area. As I mentioned in 2009, NRC was able and had the

1809 authority to put in place cybersecurity regulations that have

1810 the licensees identify all of what we term critical digital

1811 assets at the site and then propose a security plan to the

1812 NRC. We have received those from all of our power plant

1813 licensees. We have reviewed them, and I believe that we have

1814 begun our process of inspecting to those cybersecurity plants

1815 that are in place.

1816 Mr. {McNerney.} So they may be more secure than our

1817 conventional plants?

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1818 Ms. {Svinicki.} I can't--I have visited one fossil
1819 plant but I did not discuss cybersecurity there so I am not
1820 certain.

1821 Mr. {McNerney.} Is there any legislation needed to
1822 enable the nuclear plants to secure themselves from cyber
1823 attack?

1824 Ms. {Svinicki.} In my time on the Commission since
1825 2008, the Commission has looked very actively at our legal
1826 authorities, and we have not identified any gaps that we
1827 have, so we do not seek any additional authorities in this
1828 area. We feel that we have a very robust authority.

1829 Mr. {McNerney.} Thank you. One or two other questions
1830 for you. Small modular reactors--how long might it take for
1831 a competent power producer to get a license for a small
1832 modular reactor? Are there any licenses out there now?

1833 Ms. {Svinicki.} There are not, and we have no pending
1834 designs that are undergoing review right now. We do
1835 anticipate with the Department of Energy's program now, they
1836 made selection of a technology for their program late last
1837 year. We expect that we may receive that application in, I
1838 think either late 2013 or 2014, I believe. Chairman

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1839 Macfarlane says it will be 2014.

1840 Mr. {McNerney.} Are there any foundries in the United
1841 States capable of producing the containment vessels for these
1842 reactors?

1843 Ms. {Svinicki.} I think I would like to take that
1844 question for the record to be certain of being accurate in my
1845 response, but I believe that the intention is that the small
1846 modular reactors would have components, a substantial portion
1847 of which would be able to be manufactured here in the United
1848 States.

1849 Mr. {McNerney.} But the large containment vessel, you
1850 are not sure of?

1851 Ms. {Svinicki.} I am not certain for the various
1852 designs that are proposed for small modular reactors. I am
1853 not sure of the largest of the sizes of those. I don't know
1854 if any my colleagues are.

1855 Mr. {McNerney.} How about for the other kind of nuclear
1856 reactors? Are those foundries capable of producing those?

1857 Ms. {Svinicki.} For the large light water reactors,
1858 there are not U.S. facilities.

1859 Mr. {McNerney.} Chairman Macfarlane, you are a true

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1860 expert in nuclear waste. Is that correct?

1861 Ms. {Macfarlane.} That is correct.

1862 Mr. {McNerney.} You mentioned in your testimony the
1863 laser uranium enrichment facilities. Are those also used in
1864 processing nuclear waste?

1865 Ms. {Macfarlane.} No, they are not.

1866 Mr. {McNerney.} Do you see other facilities for nuclear
1867 waste than Yucca Mountain on the horizon that could be
1868 acceptable within a 20-year time frame?

1869 Ms. {Macfarlane.} I think what is acceptable and what
1870 policies develop is in part dependent on occurs in Congress
1871 and the Administration. In the original Nuclear Waste Policy
1872 Act, there was always a question of a second repository, and
1873 currently, the Yucca Mountain repository was to be
1874 statutorily bound by certain volume of material. That volume
1875 is already exceeded at reactors, so there is an open question
1876 about a second repository.

1877 Mr. {McNerney.} In a futuristic sense, do you see
1878 nuclear waste becoming valuable in its own right within the
1879 next 20 or 50 years?

1880 Ms. {Macfarlane.} It is not my area of expertise.

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1881 Mr. {McNerney.} Okay. Thank you, Mr. Chairman. I
1882 yield back.

1883 Mr. {Shimkus.} The gentleman yields back his time. The
1884 Chair now recognizes the gentleman from Texas, Mr. Burgess,
1885 for 5 minutes.

1886 Dr. {Burgess.} I thank the chairman for the
1887 recognition.

1888 Commissioner Svinicki, let me ask you a question. In
1889 your opening remarks, you made mention of the fact of the
1890 ability to reenergize or revisit Yucca Mountain would depend
1891 not only on the funding but the degree to which the data
1892 collected during the license application, the degree to which
1893 that data has degraded over time.

1894 Now, I was fortunate enough to go with Chairman Shimkus
1895 to Yucca Mountain 2 years ago. At that point they were 6
1896 months into their appropriations lapse, and the gentleman who
1897 showed us around that day did make mention of the fact that
1898 there will over time be an attrition of that data or
1899 degradation of that data. It appeared to me that there was a
1900 lot of material collected during that license application.
1901 Do you have a sense as to--you know, we always talk about the

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1902 half life of nuclear material but do you have a sense about
1903 the half life of this data that has been collected during the
1904 licensing application and how long the inactivity of the
1905 Congress or the Commission, how that will harm the ability to
1906 reclaim that data?

1907 Ms. {Svinicki.} Congressman, my testimony in response
1908 to the prior question discussed the fact that the longer that
1909 activities have been in suspension, the more challenging and
1910 expensive the reconstitution is or reconstitution may even be
1911 imperiled, although you are mentioning an analysis. What I
1912 had in my mind when I made that statement was actually people
1913 and experts and scientists. I know that the NRC since the
1914 suspension of its Yucca Mountain activities has had
1915 retirements of scientists who had been on this project for
1916 over 20 years and also we have reassigned individuals.
1917 Conceptually, they may be available then to be brought back
1918 to this work but there is additionally, as you mentioned, at
1919 Yucca Mountain there were physical samples and core borings.
1920 The quality and chain of custody of those, the licensing
1921 process was a very, very important matter. I don't know the
1922 state of DOE's preservation of any of that chain of custody

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1923 of those materials for the purposes of us relying upon them
1924 in a scientific investigation. So I think there are many
1925 dimensions to the challenges of reconstitution but time is
1926 the enemy.

1927 Dr. {Burgess.} Yes, there is a big machinery that was
1928 in use that seemed to be just out in the weather and had
1929 daisies growing out of the treads and that sort of thing,
1930 which just you really had to wonder, this funding lapse or
1931 this appropriations lapse is very damaging, and the real
1932 loser here is the poor consumer who has funded this for years
1933 with surcharges on their bill with the expectation that in
1934 the future their reliability and their supply of electricity
1935 would be assured because the federal government was in fact
1936 taking care of this problem of long-term storage. Is that a
1937 fair statement?

1938 Ms. {Svinicki.} Yes, it is.

1939 Dr. {Burgess.} And I do want to acknowledge the fact
1940 that you have been very responsive to my office and my staff,
1941 and I appreciate that. I was also concerned when the
1942 Fukushima reactor went down, the danger from the rods and the
1943 spent fuel pools. You provided some reassurance to us that

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1944 that was not as big a problem as it appeared in the press, so
1945 I was grateful for your input that day.

1946 Chairman Macfarlane, can I ask you a question? I have a
1947 letter here from the National Mining Association to you dated
1948 from January 7th of this year, and they have several points
1949 that they were making, but the lead point and one that is of
1950 concern to uranium producers in my area of North Texas is the
1951 relicensing applications that apparently are pretty
1952 expensive. Their fees are pretty expensive and yet they are
1953 told by the Commission that the staff man-hours are not there
1954 to be able to process those relicensing applications because
1955 of lack of funding, but it does seem like they are funding
1956 that activity with their application fees. What am I missing
1957 here?

1958 Ms. {Macfarlane.} No, I think we have--my understanding
1959 is, we have adequate staff to deal with the new applications
1960 and the relicensing applications. The issue sometimes is
1961 that we don't get complete applications and so there is a
1962 period of back and forth with the licensees.

1963 Dr. {Burgess.} Well, and again, the opinion of this
1964 letter submitted by the National Mining Association was these

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1965 applications were submitted in their entirety and that they
1966 were complete. I would appreciate some follow-up on this
1967 because clearly there is a concern, and Mr. Chairman, I would
1968 ask unanimous consent to put the National Mining Association
1969 letter into the record.

1970 Mr. {Shimkus.} Is there objection? Hearing none, so
1971 ordered.

1972 [The information follows:]

1973 ***** COMMITTEE INSERT *****

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1974 Dr. {Burgess.} Since you were so compliant, I will
1975 yield back my 8 seconds.

1976 Mr. {Shimkus.} It is a historical event, your yielding
1977 back time. The Chair now recognizes the gentlelady from the
1978 Virgin Islands, Ms. Christensen, for 5 minutes.

1979 Dr. {Christensen.} Thank you, Mr. Chairman. Good
1980 morning, everyone.

1981 In addition to the three orders to commercial nuclear
1982 reactors in the United States in order to address the safety
1983 concerns raised by the Fukushima accident in Japan that you
1984 issued last year, the NRC also required all commercial
1985 nuclear reactors to perform inspections or walk-downs to
1986 verify that they are prepared to respond to flooding and
1987 earthquakes as required in their licenses and that all
1988 necessary equipment to respond to such events is available,
1989 functional and properly maintained.

1990 Chairman Macfarlane, I understand that all operators
1991 have completed walk-downs of their facilities?

1992 Ms. {Macfarlane.} They have.

1993 Dr. {Christensen.} And what did the walk-downs find?

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1994 Did they raise any red flags about the preparedness of the
1995 U.S. nuclear fleet to respond to a serious flood or seismic
1996 event?

1997 Ms. {Macfarlane.} I appreciate the question. Most
1998 plants were just finding only minor discrepancies. A few
1999 plants identified more significant issues in the flooding
2000 walk-downs. In the seismic walk-downs, no significant issues
2001 to date.

2002 Dr. {Christensen.} And the NRC, as I understand it,
2003 they asked the U.S. commercial reactors to go a step further
2004 and reevaluate their flood and seismic hazards and compare
2005 any newly identified hazards with the extreme-events plans
2006 are designed to withstand. What was the goal of the
2007 reevaluations, or was that just for the few plants that--

2008 Ms. {Macfarlane.} Well, the reevaluation actually was
2009 begun even before Fukushima, the Fukushima accident, and then
2010 it was folded into the Fukushima recommendations, but the
2011 goal is to bring the plants and their seismic hazard analysis
2012 and flooding hazard analysis into up-to-date current
2013 information that is available in the earth sciences. So it
2014 is updating the hazard analysis at all these facilities.

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2015 Dr. {Christensen.} I understand that the reevaluations
2016 will be completed by the end of 2015. Is that correct?

2017 Ms. {Macfarlane.} Yes.

2018 Dr. {Christensen.} And then once they are complete,
2019 what would the next step be for NRC?

2020 Ms. {Macfarlane.} Depending on what is found, we will
2021 have to go individually plant by plant and see if some
2022 changes are required or not. It depends on what we find at
2023 each plant.

2024 Dr. {Christensen.} Thank you. These reevaluations,
2025 they are to be a critical step in ensuring that the U.S.
2026 nuclear fleet is prepared to respond to a range of hazards
2027 and protect the public health in an emergency. I appreciate
2028 your answers.

2029 I don't have any further questions, Mr. Chairman. I
2030 yield back.

2031 Mr. {Shimkus.} The gentlelady yields back her time and
2032 now the Chair recognizes the gentleman from Ohio, Mr. Latta,
2033 for 5 minutes.

2034 Mr. {Latta.} Well, thank you very much, Mr. Chairman,
2035 and thank you very much to you all for being here today. We

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2036 really appreciate it.

2037 If I could just kind of back up a little bit. There
2038 were a few comments made today about cybersecurity, and as we
2039 all know, in the last month, month and a half, it has been in
2040 the news quite a bit, and in fact, just last week in my
2041 district, we had a large cybersecurity event that we had the
2042 FBI in to talk to about 170-plus people in my district as to
2043 what is happening and what they have to do protect themselves
2044 and their businesses. But if I could, going back, the NRC
2045 had an order after September 11th that had ordered nuclear
2046 power plants to enhance their security including requirements
2047 for certain cybersecurity threats, and this effort later
2048 culminated in a specific cybersecurity rule in 2009 and the
2049 associated regulatory guidance was based on the cybersecurity
2050 standards published by the National Institute of Standards
2051 and Technology and the Department of Homeland Security, and
2052 if I could, Commissioner Ostendorff, could I ask if you could
2053 give a brief overview of how that rule is being implemented
2054 and the level of coordination between the NRC and other
2055 agencies.

2056 Mr. {Ostendorff.} Thank you, Congressman, for the

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2057 question. This is a complicated area. Two years ago, this
2058 Commission worked with FERC and NERC to outline the lines of
2059 demarcation using what is called a bright-line survey to
2060 ensure that we had a unitary regulatory approach but only the
2061 NRC would regulate and site basically the transmission line
2062 boundary of the plants, recognizing that NERC on behalf of
2063 FERC is regulating externally. So that I would say is a
2064 great example of positive cooperation inside the U.S.
2065 interagency to ensure we did not have conflicting regulatory
2066 inspections, rules, et cetera.

2067 The cyber rule that our licensees are required to be in
2068 compliance with as of the end of December of last year,
2069 currently our staffs are out and doing inspections to
2070 ascertain compliance with that rule. I think our staff is
2071 well equipped to do that. I think we will find some things
2072 we hadn't thought about. This is a tough area. But I think
2073 we had the proper resources and the proper approach going
2074 forward. This Commission is staying very actively involved
2075 with our federal agency counterparts. Just last Thursday, we
2076 spent 2-1/2 hours in a classified briefing with DHS on cyber
2077 issues for the United States and so I think it is an issue

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2078 that is very much before us as a Commission and an agency.

2079 Mr. {Latta.} Well, thank you very much, and Mr.

2080 Magwood, if I could just ask you briefly, I know that in 2011

2081 when you all were testifying before us here in committee, I

2082 had asked questions, just kind of paraphrasing how if you had

2083 all the information that you needed to make informed

2084 decisions and pretty much you had said most of the time that

2085 that was happening. Can you tell me how are things going

2086 right now with the flow of information back and forth for you

2087 all to make these very important decisions that come before

2088 the NRC today?

2089 Mr. {Magwood.} Actually, Congressman, the question has

2090 never come to my mind in the last 6 or 7 months so I think

2091 the situation at the NRC is working very well.

2092 Mr. {Latta.} Thank you very much. Mr. Chairman, I

2093 yield back.

2094 Mr. {Shimkus.} The gentleman yields back his time. The

2095 Chair recognizes the gentleman from Texas, Mr. Green, for 5

2096 minutes.

2097 Mr. {Green.} Thank you, Mr. Chairman.

2098 Chairman Macfarlane, in your testimony you mentioned the

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2099 importance of international cooperation with the NRC. In
2100 2011, our committee members led by Representative Murphy, we
2101 did a trip to France and Sweden to see how the French and
2102 Swedish reprocess and store their nuclear waste. I was
2103 impressed with the progress not only in France, because I was
2104 there in 1998 to look at how they are reprocessing their
2105 waste but particularly with Sweden seeing what they have done
2106 with even a prototype of a deep storage. I am interested in
2107 learning what cooperation is presently taking place between
2108 the Commission and, for example, Sweden and France and what
2109 lessons can be taken from their models.

2110 Ms. {Macfarlane.} In terms of nuclear waste disposal?

2111 Mr. {Green.} Nuclear waste disposal, or recycling.

2112 Ms. {Macfarlane.} Right. We don't do a lot on the back
2113 end of the fuel cycle with these countries. We certainly
2114 exchange information with their regulators and what their
2115 regulators regulate because it is not our job to make policy
2116 for the back end of the fuel cycle in the United States. We
2117 just oversee the existing facilities. So we are aware of
2118 what is going on there and we are aware of what their
2119 regulators are doing at these facilities.

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2120 Mr. {Green.} Well, it sounds like you are saying that
2121 for the United States to be involved in reprocessing, and
2122 even for the long-term nuclear storage, whether it be Yucca
2123 Mountain or something similar to what Sweden has done, you
2124 need more guidance from Congress?

2125 Ms. {Macfarlane.} Yes, please.

2126 Mr. {Green.} Myself along with 25 other Democratic
2127 members sent a letter to you 3 weeks ago calling for your
2128 agency to adopt a flexible performance-based approach as
2129 recommended by the independent ACRS with regard to mandating
2130 filters on boiling-water reactors. First I wanted to ask,
2131 what is the status of the Commission's response to our
2132 letter?

2133 Ms. {Macfarlane.} We responded to your letter.

2134 Mr. {Green.} You did.

2135 Ms. {Macfarlane.} We sent you a response.

2136 Mr. {Shimkus.} Unacceptably, but they did respond.

2137 Mr. {Green.} Okay. Second, I would like to learn what
2138 outreach the Commission has made toward industry and other
2139 stakeholders in order to achieve the regulatory goal in the
2140 safest and most effective and least costly manner.

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2141 Ms. {Macfarlane.} We need regularly with industry and
2142 other stakeholders who are interested in these issues and
2143 understand their concerns and work together.

2144 Mr. {Green.} Another question. In your testimony, you
2145 state the NRC, due to the lack of final waste confidence
2146 rule, will not issue any final licenses until at least
2147 September of 2014. As you are aware, most legislation that
2148 is passed by this chamber and signed into law typically calls
2149 for agencies to issue rules within 6 to 12 months, and I
2150 would like to hear why the Commission, for an issue that goes
2151 to the heart of your agency's duties, needs in excess of 2
2152 years to issue a final rule.

2153 Ms. {Macfarlane.} We have a lot of in developing an
2154 environmental impact statement and other processes we are
2155 governed by NEPA law and other laws, and there is a public
2156 comment period that must be incorporated into all these
2157 things, and this is in part what takes time.

2158 Mr. {Green.} Additionally, I would like to learn what
2159 guidance the Commission has provided these facilities whose
2160 licenses are being delayed.

2161 Ms. {Macfarlane.} We are actively working on the

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2162 licenses. We just won't issue the final licenses or license
2163 renewals in this period.

2164 Mr. {Green.} With the likelihood of sequestration
2165 hitting all federal agencies by midnight tonight, I would
2166 like to ask first what steps is the NRC taking in order to
2167 best comply with sequestration. Are furloughs or layoffs
2168 anticipated?

2169 Ms. {Macfarlane.} We do not anticipate any furloughs or
2170 layoffs.

2171 Mr. {Green.} And second, will sequestration in any way
2172 degrade the NRC's ability to keep our Nation's nuclear
2173 facilities safe?

2174 Ms. {Macfarlane.} Absolutely not.

2175 Mr. {Green.} Thank you, Mr. Chairman.

2176 Mr. {Shimkus.} And if the gentleman would yield, just
2177 to correct the record, I think you were referring to a Barrow
2178 letter that you signed that I am unsure of whether the
2179 Commissioner responded to. Would someone want to address
2180 that?

2181 Ms. {Macfarlane.} I believe we have not responded to
2182 that letter. Sorry.

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2183 Mr. {Green.} You haven't responded to the Barrow
2184 letter?

2185 Ms. {Macfarlane.} Right.

2186 Mr. {Green.} Because obviously from Georgia, they have
2187 a bigger interest. We are having our problems in Texas
2188 because one of our investors for the South Texas expansion
2189 also owned Tokyo Power, so we are still looking for \$125
2190 million to expand nuclear power in South Texas. Thank you.

2191 Mr. {Shimkus.} The gentleman yields back his time. The
2192 Chair now recognizes the other gentleman from Ohio, Mr.
2193 Johnson, for 5 minutes.

2194 Mr. {Johnson.} I thank the chairman for the
2195 recognition, and I am new to the Energy and Commerce
2196 Committee so I look forward to the discussions we will have
2197 with you Commissioners, and I thank the chairman for holding
2198 this hearing on a very, very important topic.

2199 Ms. Macfarlane, according to the Japanese government's
2200 report, and I quote, ``TEPCO's manual for emergency response
2201 to a severe accident was completely ineffective.'' What is
2202 your view and the view of your colleagues about the ability
2203 of U.S. emergency response capability to a severe accident?

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2204 Ms. {Macfarlane.} I think we are prepared but I think
2205 we must be mindful that there are situations that we may not
2206 be expecting and we need to learn from operating experience,
2207 but I invite my colleagues to comment.

2208 Mr. {Apostolakis.} One of the problems that they had in
2209 Japan is that there was no single authority making decisions.
2210 In this country, we have made sure that there is one
2211 authority. We are not going to go to higher political
2212 figures to approve what needs to be done. So I believe that
2213 we are in much better shape than the Japanese were at that
2214 time.

2215 Mr. {Ostendorff.} Congressman, I would just add to my
2216 colleagues' comments two specific issues we are also
2217 addressing. One, as mentioned earlier, in response to a
2218 prior question, we have not typically dealt with multiple-
2219 unit accidents. We have dealt with a one-reactor accident at
2220 one site even if that site had two or three reactors. So
2221 looking at multi-unit response. Secondly, we are looking at
2222 how to integrate our casualty and operating procedures in a
2223 more effective way.

2224 Mr. {Johnson.} Sure. Well, I appreciate those answers,

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2225 and Mr. Apostolakis, you actually hit on something that I
2226 want to go to next. The Japanese Diet report stated, ``We
2227 believe that the root causes were the organizational and
2228 regulatory systems that supported faulty rationales for
2229 decisions and actions.'' A report by the American Nuclear
2230 Society Special Committee on Fukushima stated, ``The
2231 committee believes that in responding to the accident at the
2232 Fukushima Daishi plant, human error and flaws in governance
2233 and regulatory oversight contributed to the severity of the
2234 accident.''

2235 Mr. Apostolakis, you just mentioned that we are way
2236 ahead of where the Japanese were. Don't you think it is
2237 important to compare our regulatory systems with Japan's to
2238 see if we share some of the gaps that contributed to the
2239 accident?

2240 Mr. {Apostolakis.} There is no formal comparison that
2241 the Commission has done. However, that doesn't mean that we
2242 are not aware of the differences, and if one wanted a more
2243 formal approach to the evaluation, that would be an
2244 interesting thing, but I don't think we can say that we
2245 completely ignored the differences between us and the

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2246 Japanese when we issue actions, orders or other regulations.

2247 Mr. {Johnson.} Well, I appreciate that. It seems to me
2248 that such a comparison would reveal and further validate what
2249 you just testified to, that America is much further ahead of
2250 where the Japanese were in terms of information flow,
2251 decision making, and it would seem to me that that would be
2252 an important step prior to issuing additional regulations
2253 that are going to additionally hamstring our nuclear industry
2254 from operating, and in some cases, according to nuclear
2255 industry experts, drive our team out of existence.

2256 So I am not sure we are doing our homework. We know
2257 that we are ahead of the Japanese and yet we want to
2258 proliferate regulations to address what? I mean, if we don't
2259 know what the gaps are, what are we addressing?

2260 Mr. {Ostendorff.} I wanted just to comment. I think we
2261 have heard loud and clear today, I don't think we have been
2262 effective at communicating back to this committee a
2263 satisfactory answer to your question. I think the Japanese
2264 lessons learned directorate, about 20 people on our staff
2265 have been working these issues, looking at differences. I
2266 think we failed to communicate that in a clear manner to this

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2267 committee and I think I need to talk to my colleagues about
2268 how can we better respond because I think a lot of the work
2269 that we have done, we have not appropriately told you how we
2270 are doing it.

2271 Mr. {Johnson.} Well, I would appreciate responses to
2272 that because I think that is a necessary first step before we
2273 start issuing regulations that address some gap that we are
2274 not even aware of.

2275 Mr. Chairman, I yield back.

2276 Mr. {Shimkus.} And I appreciate the gentleman from
2277 Ohio. Maybe we will get a chance to officially ask you for a
2278 better response. And now the Chair recognizes the gentleman
2279 from New York, Mr. Engel, for 5 minutes.

2280 Mr. {Engel.} Thank you very much, Mr. Chairman, and I
2281 welcome everyone. Thank you for joining us here today.

2282 My district is very close to the Indian Point nuclear
2283 plant in Buchanan, New York. The safety of Indian Point
2284 continues to be one of the most serious issues facing the
2285 Hudson Valley region, and I have been calling for it to be
2286 shut down for years. I was the first Member of Congress to
2287 call for its shutdown, probably 10 years ago, and Governor

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2288 Cuomo has also called for it to shut down. The bottom line
2289 is the siting of the plant, it is near the major metropolitan
2290 area in the country, the New York metropolitan area, and if
2291 it were being built today, it would never be built in
2292 Buchanan, New York. Frankly, I think that the scrutiny of
2293 the renewal for the licenses of these plants should be as
2294 great as a new plant being built. I don't understand why
2295 there seems to be less of a threshold for relicensing of the
2296 plants than there is for a brand-new plant. Safety is
2297 safety, and it should be the same for both of them.

2298 Since the disaster at Fukushima, the need to shut down
2299 Indian Point, as far as I am concerned, has only grown. I am
2300 not opposed to nuclear power. I never mentioned closing
2301 Indian Point until I started learning about it. It is built
2302 on a major fault. On September 11th, one of the planes
2303 hitting the World Trade Center flew directly over Indian
2304 Point. It is just unbelievable. I am happy that the NRC has
2305 implemented three immediate orders but I hope there will be
2306 strong follow-up, especially in regards to plants like Indian
2307 Point that have a history of problems. The fire last month
2308 at one of their transformers is just the latest in a long

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2309 line of a systematic failures at the Point. Let me say,
2310 every Member of Congress who has a district very near to
2311 Indian Point has called for its closing.

2312 Beyond the safety issues at Indian Point, there are
2313 numerous environmental concerns--the effect on the Hudson
2314 River--and I have asked the NRC to see if we can move to a
2315 closed-cycle cooling system, which would have less of an
2316 impact on the water and the fish. Another major concern is
2317 the radioactive waste stored in the pools, almost three times
2318 the amount that is currently being stored there than was
2319 stored at Fukushima, and the plant sits near a reservoir that
2320 serves almost 9 million people. I hope we will find a long-
2321 term plan for storing this waste. I will soon be
2322 reintroducing legislation that would call for material to be
2323 moved into dry casks within a year, and I hope that we will
2324 consider it.

2325 Let me say that the safety violations at Indian Point
2326 and other nuclear power plants have raised serious questions
2327 about nuclear power safety. I anticipate that the NRC will
2328 continue to monitor the plants closely and to see that the
2329 three immediate orders are implemented quickly and

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2330 effectively.

2331 Can someone please tell me why there seems to be a
2332 lesser standard for the relicensing of plants than there is
2333 to build a plant? If a plant is unsafe or if there are
2334 questions about its safety, why should it matter if it is
2335 newly built or if it is an old plant where the license is
2336 being renewed? Safety is safety and that is the bottom line.
2337 I am wondering if anybody can tell me the rationale for that.

2338 Ms. {Macfarlane.} I will take a stab at that and offer
2339 it to my colleagues, but very briefly, in relicensing, we
2340 look at the overall systems and structures in the plant. We
2341 continually evaluate the equipment, inspect and oversee the
2342 equipment, the operations of the facility, the safety culture
2343 of the facility. We have resident inspectors on site.
2344 Currently right now at Indian Point there are four for two
2345 reactors who every day are there overseeing the safe
2346 operation of the facility, but let me ask my colleagues to
2347 jump in.

2348 Mr. {Apostolakis.} Yes, I don't think it is accurate to
2349 say that we have a lesser standard for license renewal. The
2350 license renewal focuses on aging effects, and I think that is

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2351 appropriate because the plant has operated for 40 years or
2352 will have been operated for 40 years. If anything else
2353 happens that threatens safety, as the chairman said, then it
2354 is handled according to the normal processes we have for
2355 operating plants, so the only new thing is this aging effect,
2356 so it is not a lesser standard, it is a more limited review.
2357 The scope is more limited.

2358 Mr. {Engel.} Well, it still would seem to me--I
2359 understand what you are saying, but it still would seem to me
2360 that the scope should be broadened. There have been
2361 questions about it and they are legitimate questions. It is
2362 not just two or three people who are opposed to nuclear
2363 power. There are serious questions by those of us that
2364 support nuclear power, and I do. I think the United States
2365 has to have a balanced energy policy, but I think that it is
2366 clear to me that Indian Point should be shut down. Thank
2367 you, Mr. Chairman.

2368 Mr. {Shimkus.} The gentleman yields back his time. The
2369 Chair recognizes the gentleman from Texas, Mr. Hall, for 5
2370 minutes.

2371 Mr. {Hall.} Thank you, Mr. Chairman.

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2372 I noted, Commissioner Magwood, you were talking of
2373 issues and the things that you are faced with, and I am just
2374 trying to make the point that you all do work and studies for
2375 us with dangerous, threatening and relentless enemies out
2376 there.

2377 I think I want to ask Commissioner Apostolakis--I do
2378 better calling you George. Did I pronounce it right?

2379 Mr. {Apostolakis.} Yes.

2380 Mr. {Hall.} A year ago, you testified before the Senate
2381 EPW committee and made the following remarks: ``I don't
2382 think that what happened in Fukushima can happen here, and I
2383 repeated, it was not unthinkable.'' Were you talking about
2384 it was not unthinkable that that could happen there? Is that
2385 what you meant? It is not important, but that is the way I
2386 took it.

2387 Mr. {Apostolakis.} People were saying that what
2388 happened in Fukushima was an unthinkable event. I said no,
2389 it was not. I mean, there were so many flaws in the system
2390 and the design that really it was not unthinkable.

2391 Mr. {Hall.} Well, let me go, and in fairness to you,
2392 say what you did say. You said, ``I don't think what

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2393 happened in Fukushima can happen here, and I repeat, it was
2394 not unthinkable. They made terrible mistakes. There are, I
2395 think, a couple of things that stand out if you look at
2396 happened in Japan. The regulatory authority there, NISA, was
2397 very, very weak technically and they didn't have the amount
2398 of independence that we have, for example. The second is
2399 more technical. It has to do with tsunami calculations where
2400 they were very poorly done, let us put it that way. They
2401 ignored data from the past.' ' Is that still--do you still
2402 feel that way?

2403 Mr. {Apostolakis.} This is still my view, yes.

2404 Mr. {Hall.} You don't think an accident like Fukushima
2405 can happen here?

2406 Mr. {Apostolakis.} No, I don't think so.

2407 Mr. {Hall.} Well--

2408 Mr. {Apostolakis.} Well, I mean--

2409 Mr. {Hall.} I hope so. I hope you are right. But, you
2410 know, some 15 or 20 years ago, we did a study in the
2411 committee I chaired at that time studying asteroids, and we
2412 found out during the hearing--and I got people from Russia,
2413 China, England and, I believe, France that were supposed to

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2414 have witnesses here but none of them showed because they were
2415 told that we were going to get a world operation to look for
2416 asteroids because they affect the world and not just Texas or
2417 not just your State or this Nation, and none of them showed.
2418 But during the committee hearing, it came up that an asteroid
2419 had just missed this country by 15 minutes some time the year
2420 before. No one knew it. I didn't know it. No one knew it,
2421 and we really ought to be studying that.

2422 I think isn't it more reasonable to think and to
2423 thoroughly consider the imposition of additional requirements
2424 and ensure that any requirements are cost-effective, that an
2425 accident like Fukushima can happen here? The asteroid just
2426 happened in Russia, and we got pictures of it. We know what
2427 happened there. We don't know why it was there or when it
2428 was coming or when the next one will come. You protect us
2429 from very serious and relentless enemies. Why is it that you
2430 think that that just couldn't happen? Please don't let up,
2431 because it could happen.

2432 Mr. {Apostolakis.} Well, I don't think the question
2433 really should be whether something can happen. It is really
2434 a question of probability, and for example, you mentioned the

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2435 asteroid issue. I don't think that there could be rationale
2436 on our part to start protecting nuclear plants from--it
2437 happened in Russia, but, you know, this is not something
2438 that--

2439 Mr. {Shimkus.} I apologize. I have no idea what is
2440 going on with the microphone. We will work through it.
2441 Would the gentleman continue?

2442 Mr. {Hall.} Don't you kind of think the public might
2443 benefit from a better understanding of the differences
2444 between nuclear safety in Japan and nuclear safety here?

2445 Mr. {Apostolakis.} No, we certainly would benefit from
2446 that, yes.

2447 Mr. {Hall.} But if you think it couldn't happen here, I
2448 don't understand how you can answer that last question as you
2449 did. I know things can happen. I don't know how much more
2450 time I have.

2451 Mr. {Shimkus.} Your time is expired.

2452 Mr. {Hall.} In that case, I want to yield a question--
2453 oh, the gentleman is gone.

2454 Mr. {Shimkus.} No, the gentleman's time is expired.

2455 Mr. {Hall.} I yield back my time.

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2456 Mr. {Shimkus.} The gentleman yields back his time.

2457 Just in time for Mr. Markey. The Chair now recognizes the
2458 gentleman from Massachusetts, Mr. Markey, for 5 minutes.

2459 Mr. {Markey.} Thank you, Mr. Chairman, very much.

2460 The Fukushima meltdowns taught us that not only do we
2461 need to develop safeguards to prevent nuclear accidents but
2462 we must also plan strategies to respond to such an accident
2463 and to minimize the damage. Twenty-three reactors in this
2464 country have the same design as the ones that melted down in
2465 Japan including Pilgrim in Massachusetts and Vermont Yankee.
2466 The NRC staff recommended that these reactors have vents that
2467 could release hydrogen gas to prevent the sort of explosions
2468 that occurred in Japan and also that the vents include
2469 filters to remove the radioactive materials that would be
2470 released into the air if the vents were used. These filtered
2471 vents are already used in Canada and in many European
2472 countries. I strongly urge the Commission to follow the
2473 recommendations of the technical staff. If you fail to do
2474 so, I believe you will be making a mistake. I think you have
2475 a responsibility to ensure public health and safety in the
2476 face of a nuclear catastrophe that we know could happen here.

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2477 You have all testified in the past that you support the
2478 Commission's internal commission procedures. Do you all
2479 believe that we should follow those internal Commission
2480 procedures that are currently in force? Do you all believe
2481 that that is the case?

2482 Mr. {Apostolakis.} Yes.

2483 Ms. {Macfarlane.} I think we should strive to comply
2484 with our internal Commission procedures but they don't
2485 foresee every situation that might occur.

2486 Mr. {Markey.} So I have here a copy of your procedures
2487 for transmitting sensitive documents to Congress, which says
2488 that your general practice is to release them to members of
2489 your oversight committee, and that includes every member of
2490 this committee. Over the years, members of this committee
2491 have requested and received hundreds of sensitive documents
2492 as part of their oversight efforts including security-
2493 sensitive materials, proprietary materials and other
2494 nonpublic documents. I believe that every member of this
2495 committee will be as disturbed as I was to learn that in its
2496 failure to fully respond to several of my most recent
2497 oversight letters, the Commission is currently violating its

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2498 internal Commission procedures. The Commission is even
2499 considering a change to these procedures to enable it to
2500 refuse future requests for documents made by members of this
2501 committee. So I ask all of you, do you support your current
2502 procedures to provide sensitive documents to members of your
2503 oversight committee?

2504 Ms. {Macfarlane.} Right now, the Commission is
2505 evaluating the request that you made, and we are in
2506 deliberations on it, and I don't want to say any more about
2507 that until we have actually been able to go through them.

2508 Mr. {Markey.} Well, I think that in fact the Justice
2509 Department has made a ruling that although there might be a
2510 conflict with the Freedom of Information Act, that in fact
2511 their current guidance says that giving materials to a Member
2512 of Congress should not result in an agency having to make
2513 them public. So if you make this change, you will be
2514 obstructing legitimate Congressional oversight of your
2515 activities and you will be creating a more secretive agency,
2516 and I am going to resist this in every single way I can.

2517 The San Onofre nuclear reactors have been shut down for
2518 more than a year because of unexpectedly high levels of wear

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2519 found in both steam generators. Three weeks ago, Senator
2520 Boxer and I sent you a document I obtained that said that
2521 Southern California Edison and Mitsubishi engineers had
2522 identified some technical problems that could have caused
2523 this wear long before the steam generators were installed,
2524 but the document also says that they chose not to implement
2525 recommended design fixes because they wanted to avoid a more
2526 rigorous safety review and licensing process at the Nuclear
2527 Regulatory Commission. You then told us that you had
2528 initiated an expansive investigation regarding the
2529 completeness and accuracy of information that had been
2530 provided to you, and I understand that the Inspector General
2531 has also initiated an investigation of its own. So
2532 Chairperson Macfarlane, Southern California Edison wants to
2533 restart one of the reactors as soon as this summer. Can you
2534 commit to postponing any decision on this request until after
2535 the pending investigations are completed and reviewed by the
2536 Commission?

2537 Ms. {Macfarlane.} What our usual process is in this
2538 kind of situation, when all the technical aspects of the
2539 particular issues have been adequately addressed, our staff,

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2540 our executive director of operations will check with our
2541 office of Inspector General, our office of investigations to
2542 ask if there are any issues or information that might prevent
2543 the restart, and that is how we usually go about this.

2544 Mr. {Markey.} Well, I strongly recommend that you
2545 complete the investigation before you give permission to
2546 restart. I think that the prudent way to proceed on this
2547 issue, and I thank you, Mr. Chairman.

2548 Mr. {Shimkus.} The gentleman's time is expired. Just
2549 for informing the public, there are votes now on the Floor.
2550 We are going to try to make sure those in attendance get a
2551 chance to speak. I would encourage people to do it quickly.

2552 I would also, just in response to my colleague, I think
2553 there is an understanding of personal and executive sessions
2554 and issues in the record that may not be appropriate to air,
2555 and so we can address that later.

2556 The Chair now recognizes the gentleman from Virginia,
2557 Mr. Griffith, for 5 minutes.

2558 Mr. {Griffith.} Thank you, Mr. Chairman, and I do
2559 appreciate all of you all being here. I will tell you that
2560 in my first term of Congress, that first meeting that I had

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2561 with you--not you, Chairman, but before you were on board--
2562 was probably the scariest hearing that I participated in just
2563 because I knew the important issues you all were dealing with
2564 and the problems that you all were having were of great
2565 concern. I feel much better today. While we may or may not
2566 agree on some issues, I feel very confident that you all are
2567 working hard and trying to move in the right direction, and
2568 it makes me feel much better than I did this time a little
2569 short of 2 years ago. So I do appreciate that.

2570 I would ask you all to look at, and particularly, I am
2571 going to address this question to you, Commissioner
2572 Ostendorff. You all have had some time working on this and
2573 the subcommittees have. In the Commonwealth of Virginia, we
2574 had a nuclear power plant, North Anna, which after
2575 experiencing a nearby earthquake in Mineral, Virginia, was
2576 shut down for a period of time. We understand this shutdown
2577 was a result of the earthquake and subsequent NRC processes
2578 were a positive example of bringing a unit back online after
2579 an atypical event. The San Onofre Nuclear Generating
2580 Station, which was just mentioned, is currently offline, and
2581 I know there may be other issues involved, but it had an

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2582 atypical event that initially at least didn't rank as high as
2583 the earthquake, and I am just wondering if you can explain if
2584 the process that was used in North Anna is also the same
2585 process that is currently being used in that situation, San
2586 Onofre.

2587 Mr. {Ostendorff.} Congressman, I would comment that
2588 overall, the process is the same as far as how a
2589 determination is made whether it is safe to technically
2590 restart a nuclear power plant. There are some significant
2591 differences, however, between the San Onofre case and the
2592 North Anna earthquake from August of 2011. Those differences
2593 involve other pending investigations which you can't discuss
2594 in this forum. They also involve adjudication matters before
2595 the Atomic Safety and Licensing Board, so I will acknowledge
2596 there are some significant differences there.

2597 Mr. {Griffith.} All right. I appreciate that.

2598 I had another question, and I want to just make a
2599 statement. It appears that when looking at regulations, and
2600 I have been given some data that it appears that the
2601 estimates for new regulations, the cost of those estimates
2602 have been off by being as much as 350 percent more. I hope

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2603 that you all will look at your processes behind the scenes,
2604 because when you are deciding what to do on regulation, there
2605 is a cost analysis involved, and if you are off by 350
2606 percent, it indicates that something is not being analyzed
2607 correctly and I would hope that you all would do a better job
2608 on that as you go forward with any new regulations.

2609 And with that, Mr. Chairman, I am going to yield back.

2610 Mr. {Shimkus.} Thank you. The Chair recognizes the
2611 gentleman from Georgia, Mr. Barrow, for 5 minutes.

2612 Mr. {Barrow.} I thank the chairman. I thank the
2613 Commissioners for appearing today. I just want to share my
2614 concerns about proposed regulations to require the
2615 installation of external containment filters on boiling-water
2616 reactors. I want to begin by saying, I understand the
2617 Commission requires a cost-benefit analysis in order to make
2618 sure there is adequate protection for the public. I also
2619 understand that there is a movement to go forward with such
2620 regulations even in the absence of a finding that it is
2621 necessary in order to provide adequate protection for the
2622 public concern.

2623 I have generated a letter, which has been subscribed to

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2624 by a number of my colleagues, members of the House as diverse
2625 as Mike McIntyre, Jim Matheson, myself, Mr. Dingell on the
2626 one hand and other members like Steny Hoyer, Jim Clyburn,
2627 Mike Doyle, Joe Crowley, Rob Andrews and Chaka Fattah on the
2628 other, basically making the case that we want to have you all
2629 make sure that there is an adequate cost-benefit analysis
2630 performed before imposing any such mandate on the industry.
2631 The letter concludes as follows: ``Absent a finding that
2632 mandatory filter installation is necessary to ensure adequate
2633 protection of the public, we believe the Commission should
2634 work with the industry to achieve the regulatory goal in the
2635 safest, most effective and least costly manner.'' That
2636 letter speaks for itself, and with the chairman's permission,
2637 I would like to submit this letter for inclusion in the
2638 record.

2639 Mr. {Shimkus.} Without objection, so ordered. We have
2640 already discussed the letter.

2641 Mr. {Barrow.} I want to make it a part of the record on
2642 my time. Thank you, Mr. Chairman, and thank you all.

2643 [The information follows:]

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2644 ***** COMMITTEE INSERT *****

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|
2645 Mr. {Shimkus.} The gentleman yields back his time. The
2646 Chair now recognizes our final member, Mr. Kinzinger from
2647 Illinois, for 5 minutes.

2648 Mr. {Kinzinger.} Thank you, Mr. Chairman, and thank you
2649 all for your time today. Chairman Macfarlane, I am happy to
2650 see that the focus of this hearing is on the important work
2651 of the Commission. I believe your work over the next several
2652 years will determine the viability of the industry, and your
2653 decisions will have an impact on U.S. energy policy for
2654 decades.

2655 The members of this committee need to be aware that the
2656 bounty of natural gas that we have unlocked through
2657 technology and innovation is a blessing but it is going to
2658 bring new challenges. I have 35 power-generating facilities
2659 in my district, and every single one is being impacted by the
2660 lower price of natural gas including the four nuclear power
2661 plants. Good for the consumer but it may not be good for a
2662 diverse energy supply. We have some of the best minds in the
2663 world creating and collaborating on new nuclear technology.
2664 It would be a shame if low-cost natural gas discouraged U.S.

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2665 companies from investing in nuclear R&D, facilities and
2666 education.

2667 A lot of what you heard today is about the regulatory
2668 process, and I believe that the members who support nuclear
2669 power want to ensure that the Commission is operating under
2670 the best processes for the safety of the plant. I hope you
2671 will help us in this effort by answering a few more
2672 questions. We will just make them quick yes or no questions.

2673 I understand that the Atomic Energy Act grants the
2674 Commission broad authority to issue safety requirements and
2675 that the Commission's regulatory tools include orders,
2676 rulemaking and policy statements. So just yes or no, please.
2677 With regard to orders, is it true that the Commission has the
2678 authority to issue orders with nearly a majority vote? We
2679 will start with you.

2680 Ms. {Macfarlane.} Yes.

2681 Ms. {Svinicki.} Yes.

2682 Mr. {Apostolakis.} Yes.

2683 Mr. {Magwood.} Yes.

2684 Mr. {Ostendorff.} Yes.

2685 Mr. {Shimkus.} Is it that the Commission has the

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2686 authority to issue orders without conducting technical and
2687 cost-benefit analysis?

2688 Ms. {Macfarlane.} If we deem it adequate protection,
2689 yes.

2690 Mr. {Kinzinger.} So yes?

2691 Ms. {Svinicki.} Yes.

2692 Mr. {Apostolakis.} Yes.

2693 Mr. {Magwood.} Yes.

2694 Mr. {Ostendorff.} A regulatory basis is required for
2695 orders.

2696 Mr. {Kinzinger.} Okay. Is it true that the Commission
2697 has the authority to issue orders without any public
2698 participation? Do you have the authority?

2699 Ms. {Macfarlane.} Yes, we do.

2700 Ms. {Svinicki.} Yes.

2701 Mr. {Kinzinger.} And as I understand it, safety
2702 requirements that the Commission determines are necessary for
2703 the adequate protection of safety are not subjected to cost-
2704 benefit analysis. The less significant safety enhancements
2705 are subject to cost-benefit analysis, and if found
2706 inadequate, can be challenged under the agency's Backfit

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2707 Rule. Is it true that orders are not subject to challenge
2708 under the Backfit Rule?

2709 Mr. {Apostolakis.} True.

2710 Ms. {Macfarlane.} Yes.

2711 Mr. {Kinzinger.} Yet here we have the agency staff
2712 recommending that you issue an order to mandate filter
2713 systems, an approach that your expert advisory body, the
2714 Advisory Committee on Reactor Safeguards, disagrees with,
2715 that failed a cost-benefit analysis and about which there are
2716 serious questions that agency staff may have underestimated
2717 the cost. I believe that orders are a necessary and a valid
2718 tool where there is an urgent safety need in the immediate
2719 aftermath of events like September 11th or Fukushima.
2720 However, it is nearly 2 years since the Fukushima accident
2721 and the Commission acted on the most urgent, safety-
2722 significant changes a year ago. It is time to return to what
2723 we members would call regular order: restoring the agency's
2724 historic reliance on rigorous technical and cost-benefit
2725 analysis and public involvement inherent in the process of
2726 rulemaking.

2727 I understand my friend and colleague, Lee Terry, is

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2728 working on legislation in this area, and I plan to work with
2729 him to address my concern that the Commission's use of orders
2730 should be limited to urgent, significant safety needs, and
2731 with that, Mr. Chairman, I will yield back.

2732 Mr. {Shimkus.} The gentleman yields back his time. We
2733 want to thank you for coming. It will not be your last
2734 appearance. I know you are looking forward to that.

2735 If there are no other members wishing to ask questions,
2736 members are reminded that the record will remain open for 10
2737 business days to submit additional questions for the record.

2738 There being no other business to come before the
2739 subcommittee, the subcommittee stands adjourned.

2740 [Whereupon, at 11:30 a.m., the subcommittee was
2741 adjourned.]