FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

January 15, 2014

The Honorable George Apostolakis
Commissioner
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Commissioner Apostolakis:

Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Thursday, December 12, 2013, to testify at the hearing entitled "Oversight of NRC Management and the Need for Legislative Reform."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Wednesday, January 29, 2014. Your responses should be e-mailed to the Legislative Clerk in Word format at Nick.Abraham@mail.house.gov and mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Ed Whitfield
Chairman
Subcommittee on Energy and Power

John Shimkus
Chairman
Subcommittee on Environment
and the Economy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power
The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment

Attachment 1—Additional Questions for the Record

The Honorable Ed Whitfield

1. According to the NRC staff's FY 2012 report on adverse trends in the industry's safety performance: "*...the staff identified no statistically significant adverse trends in industry safety performance.*" In fact, a closer inspection of the long-term trend graphs in that report show that the industry is improving safety in 10 out of the 14 graphs. The staff indicated the remaining four: "*...did not have a statistically significant trend.*" However, the nuclear reactor safety budget has grown 48% over the last ten years even though the number of licensing actions and tasks has decreased 40%. Four reactors permanently shut down last year, another one will this year, and reports persist that others may also.

    a. Please describe what actions you believe the Commission should take to ensure the budget is commensurate with a decreased workload, a shrinking fleet, and improving industry safety performance.

    b. Please describe any recommendations you believe would improve the prioritization and application of resources to matters that are safety significant.

The Honorable John Shimkus

1. Given the DC Circuit Court of Appeals reaffirmed the NRC's obligation under the Nuclear Waste Policy Act to review the Yucca Mountain license application, do you as an individual commissioner believe it is incumbent upon the NRC to request the funding necessary to complete the license review?

2. Do you as an individual commissioner believe the NRC should propose a supplemental budget request to the Office of Management and Budget to support full resumption of the license review? If not, why not?

3. If the Commission fails to request funding for completing the Yucca Mountain licensing process, do you as an individual commissioner believe that would weaken the basis for Waste Confidence findings?

4. Given the fact that the NRC routinely issues draft SERs during other license reviews and later revises them, do you as an individual commissioner believe the Commission should utilize the same approach on the Yucca Mountain license review for the sake of transparency? If not, why not?

5. Recently, the NRC staff provided a 400-page report to the Commission: *"Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark 1 Boiling Water Reactor."* The cover memo for that report states:

    "This study shows the likelihood of a radiological release from the spent fuel after the analyzed severe earthquake at the reference plant to be very low (about 1 time in 10 million years or lower)."

The staff has provided the Commission with a 200-page report entitled *"Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel"*. In this report, the staff concluded that:

- "*The costs of expedited transfer of spent fuel to dry cask storage outweigh the benefits*";
- "*Additional studies are not needed*"; and
- "*No further regulatory action is recommended for the resolution of this issue and this Tier 3 item should be closed*".

a. As an individual commissioner, do you have any reason to doubt the NRC staff's competence in this regard?

The Honorable Joe Barton

1. In November 2013, NRC released a report entitled "A comparison of U.S. and Japanese regulatory requirements in effect at the time of the Fukushima accident."

   a. Do you support all of the findings of the staff report?

   b. The authors of the report acknowledge that the staff's comparison was not an exhaustive review. Do you think it is appropriate for the Commission to consider revising the NRC's regulatory framework without having an exhaustive review as a solid basis for such a revision?

   c. What differences between U.S. and Japanese regulatory framework were left out of the final report? Why were they not deemed to merit further analysis?

The Honorable Lee Terry

1. Prior to this hearing did Chairman Macfarlane inform you of her intention to declare her opposition to H.R. 3132?

2. Did you Do you support or oppose the policy goals of HR 3132? Would you be willing to work with staff to perfect it?

3. The June 26, 2012 NRC IG Report *"Possible Violations of the Reorganization Plan No. 1 of 1980 and NRC's Internal Commission Procedures by NRC Chairman"* (2012 IG Report) states:

   "President Carter said that the Chairman has a functional duty under the Reorganization Plan to declare emergency authority, and if he enacted emergency authority without a declaration, he would have been in violation of the Reorganization Plan. President Carter envisioned a Chairman exercising emergency authority for a specific transient emergency lasting a matter of days, not emergency authority for a matter of months."

   a. Do you agree with President Carter that a chairman has a functional duty to declare emergency authority? If not, why not?

   b. How long do you believe a chairman should be allowed to exercise emergency authority?

4. The 2012 IG Report states:

   "President Carter stated it would have been inappropriate for the Chairman to exercise emergency authority for a nuclear incident in Japan. Absent a domestic emergency, the authority lies with the full Commission and any review of the nuclear incident in Japan should have been in the hands of the Commission."

   Do you believe the use of emergency authority for foreign events is warranted? Why or why not?

5. During an emergency, the chairman or a designee acts as the Executive Team Director. NRC briefing materials list the Executive Team Director's key responsibilities for an activated operations center as the following:

   - *"Receive initial and periodic briefings on the nature and progression of the incident*
   - *Ensure other Commissioners are kept informed*
   - *Manage external interface (Federal agencies, White House, States, Congressional officials, State Department, IAEA, tribal organizations)*
   - *Call to Governor's designee and DHS Secretary*
   - *Review and approve Situation Report (SITREP) and Press Releases*
   - *Determine if Site Team (expanded activation mode) is necessary*
   - *Prepare/Act as agency spokesperson for news center and interagency events (e.g. WH briefings)*

   Please explain whether you think the inclusion of an emergency declaration would be burdensome considering these key responsibilities already exist and procedures have been established for managing necessary communications.

6. The 2012 IG Report states:

   "Several officials commented that NRC has no procedures to follow for the Chairman to assert his emergency authority."

   Do you believe the NRC should have a procedure that clearly articulates the circumstances or actions that would require a chairman to exercise emergency authority and describes the process for doing so?

   a. If so, please describe what you believe should be included in such a procedure.

   b. If not, why not?

7. According to NRC briefing materials, licensees are required to notify the NRC of an event within 15 minutes. The NRC then expects to notify – within one hour – EPA, DOE, DHS, HHS, USDA, and FEMA. For what length of time do you believe a chairman should be allowed to unilaterally exercise the power of the full commission before notifying the public, the Congress, and fellow commissioners?

8. The Office of Public Affairs leads one of the teams staffing the operations center during an emergency. Wouldn't this be an appropriate and efficient manner to notify the public in the event a chairman decides to exercise emergency authority? If not, why not?

9. One of the chairman's responsibilities as the Executive Team Director is to keep the commissioners informed. Do you believe the procedures in place to meet that responsibility would be adequate to notify fellow commissioners in the event a chairman decides to exercise emergency authority? If not, why not?

10. The Office of Congressional Affairs participates on one of the teams staffing the operations center during an emergency. Do you believe this be an appropriate and efficient manner to notify Congressional officials in the event a chairman decides to exercise emergency authority? If not, why not?

11. NRC's procedures reference communications that are pre-planned. Do you believe developing preplanned notifications of a chairman's decision to exercise emergency authority might be an effective way to ensure the timeliness and efficiency of such notifications? If not, why not?

12. In the hearing, Chairman Macfarlane testified that the agency's budget is developed by NRC staff. Section 201 of the Energy Reorganization Act of 1974 states:

    "Each Member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote."

    The prior NRC chairman asserted budget authority to unilaterally close down the legally-mandated review of the Yucca Mountain repository license application. Since the budget is a major instrument of policymaking, which is the purview of the Commission, please describe whether you believe the Chairman should be allowed to influence budget development prior to consideration by the full commission.

13. Section 201 of the Energy Reorganization Act of 1974 states:

    "In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make."

    Section 2 of the Reorganization Plan of 1980 states:

    "The Chairman as principal executive officer and the Executive Director for Operations shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations, including those for reorganization proposals, budget revisions and distribution of appropriated funds, as the Commission may by law, including this Plan, be authorized to make."

    If a majority of the Commission believes that the Chairman is failing to operate in accordance with the internal commission procedures, what action do you think commissioners should take? Do you believe legislation authorizing such action would provide clarity to such a situation?

14. The NRC Inspector General issued a report *"NRC Chairman's Unilateral Decision to Terminate NRCs Review of DOE Yucca Mountain Repository License Application"* on June 6, 2011 (2011 OIG Report):

    "OIG reviewed the Commissioners' voting process associated with SECY-10-0102 and learned that the Internal Commission Procedures were not followed relatie to voting deadline, extension requests, or polling of other Commissioners to determine whether they agree with extension requests."

And:

> *"Although the notational voting process associated with SECY-10-0102 was complete as of October 29, 2010, as of the date of this report the Commission has not held an affirmation vote on the matter and the draft order continues to sit in deliberation before the Commission for affirmation."*

a. Please indicate how long you believe a chairman or commissioner should be allowed to prevent an adjudicatory decision from being finalized.

b. Please describe what you believe would be the best mechanism to ensure Internal Commission Procedures are enforced.

c. Please provide any other resolution to such a situation that you believe would be effective at ensuring adjudicatory decisions are not unnecessarily delayed.

15. Please describe any unintended consequences you believe H.R. 3132 presents. For each postulated consequence please provide legislative language you believe would adequately mitigate it.

16. Please provide any other opinions you believe may further inform the Committee's consideration of H.R. 3132.

The Honorable Cathy Castor

1. During the hearing, I raised the issue of official international travel by the Commissioners. As I requested during the hearing, please provide an explanation of why your international travel is worth the taxpayer expense and time away from your responsibilities at the Commission.