



COMMISSIONER

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

February 12, 2014

The Honorable Ed Whitfield  
Chairman, Subcommittee on Energy and Power  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515-6115

Dear Chairman Whitfield:

I appeared before the Subcommittee on Environment and the Economy on December 12, 2013, along with my colleagues on the Commission. On January 15, 2014, you forwarded questions for the hearing record. The responses to those questions are enclosed. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Ostendorff".

William C. Ostendorff

Enclosures:  
As stated

cc: The Honorable Bobby L. Rush



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The Honorable John Shimkus  
Chairman, Subcommittee on Environment and the Economy  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515-6115

Dear Chairman Shimkus:

I appeared before the Subcommittee on Environment and the Economy on December 12, 2013, along with my colleagues on the Commission. On January 15, 2014, you forwarded questions for the hearing record. The responses to those questions are enclosed. If I can be of further assistance, please do not hesitate to contact me.

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William C. Ostendorff

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As stated

cc: The Honorable Paul Tonko

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Questions for Commissioner Ostendorff  
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.**

Answer

- a. The Commission will continue to oversee the agency budget formulation and execution processes to ensure resource requests are commensurate with workload. This includes overseeing the annual budget formulation process of developing a two year projected workload in the Nuclear Reactor Safety and Nuclear Materials and Waste Safety Programs, including the anticipated number of licensees and the number and complexity of anticipated license applications. On an annual basis, the Commission oversees the review of the baseline budget and adjusts resource allocations based on several factors, including letters of intent from current and prospective licensees, changes in regulatory requirements, and prior year expenditures. The year prior to executing the budget, the Commission oversees the review of requested resources and associated workload that was previously requested and adjusts them based on the most current information. Lastly, in the year of budget execution, the agency adjusts resources commensurate with the level of work actually received. The most recent budget that was formulated (FY2015) is based on current assumptions regarding the projected workload for FY2014. The agency will begin to develop the FY2016 budget in the coming months using updated assumptions about operating plants, combined license applications, and other indicators of the projected workload.

As of November 16, 2013, the NRC has 3871 staff, including the Office of the Inspector General, which is down 368 employees from FY2010. The NRC has actively engaged in efforts to streamline the organization. For example, the NRC initiated efforts to reduce its overhead by centralizing and consolidating corporate support functions through its Transforming Assets into Business Solutions (TABS) initiative. This effort has resulted in a reduction of Office Support FTE of 273 (25%) from FY2011 to FY2015.

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- b. Over the last few years, the agency has made improvements to our budgeting processes. Most recently, the NRC adopted a baseline budgeting approach for the development of the FY2015 budget. The approach uses information on the execution of resources from the prior year as a starting point for developing the resource request, then takes into account known “fact-of-life” changes in workload as well as the Commission’s planning objectives for budget development and prioritization of planned activities to ensure prioritization and application of resources to matters that are safety significant. Further, during the budget process, the Commission ensures that adequate resources are requested to achieve the safety and security goals and objectives as described in the agency Strategic Plan. As stated in response to part (a) of this question, with the oversight of the Commission, the agency should continue its annual budget formulation and execution processes to ensure the most effective and efficient application of resources.

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**1. Given the DC Circuit Court of Appeals reaffirming 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?**

Answer

The Commission has already acted to comply with the Court's decision ordering the NRC to "promptly continue with the legally mandated licensing process" for the Department of Energy's Yucca Mountain license application, "unless and until Congress authoritatively says otherwise or there are no appropriate funds remaining." I do not believe that any further action by the Commission is compelled by the D.C. Circuit decision. The Court did not require the NRC to request further appropriations; in fact, the Court went so far as to state that "Congress, of course, is under no obligation to appropriate additional money for the Yucca Mountain project." But, it is more than clear from the decision that the NRC has a duty to comply with the Nuclear Waste Policy Act. I personally believe it is incumbent upon the NRC to request that Congress appropriate funds to the NRC from the Nuclear Waste Fund in furtherance of the licensing process unless and until the Nuclear Waste Policy Act is amended to provide a different statutory direction for repository licensing.

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**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?**

Answer

As previously stated, it is clear from the D.C. Circuit Court decision that the NRC has a duty to comply with the Nuclear Waste Policy Act. I personally believe it is incumbent upon the NRC to request that Congress appropriate funds to the NRC from the Nuclear Waste Fund in furtherance of the licensing process unless and until the Nuclear Waste Policy Act is amended to provide a different statutory direction for repository licensing. The first logical steps are being implemented as directed in the Commission's November 18, 2013, adjudicatory order and we appear to have sufficient carryover funds to complete these activities without an FY14 supplemental appropriation.

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**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?**

Answer

No. At a high level, the fundamental question in the area of Waste Confidence is not when a repository will be available, but whether spent fuel can be safely stored and without significant environmental impacts until a repository becomes available. More importantly, the staff has completed a draft Generic Environmental Impact Statement (GEIS) documenting the impacts if a repository is delayed or does not become available. Although the Commission is currently considering comments it has received on the GEIS that it has prepared, it is confident not only that it is technologically feasible to license and construct a repository, but also that the final GEIS will adequately address the impacts of continued storage under each of these scenarios.

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**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?**

Answer

It is not the NRC's practice to issue "draft" safety evaluation reports (SERs). For some licensing actions, the NRC issues SERs with open items. An SER with open items is final on all matters except those designated as "open items," and receives the same level of management and legal review as an SER with no open items. Once open items are closed, a complete SER is issued. For other licensing actions, the NRC issues chapters of the SER as they are completed.

With respect to the SER for the Yucca Mountain license review, in our November 18, 2013, Order (CLI-13-08), we directed the staff to work on the remaining four volumes of the SER (Volumes 2-5), using the approach that was underway when work on the SER was suspended—that is, the staff should work on the completion of all remaining volumes concurrently but issue each SER volume upon completion. As stated in the November 18, 2013, Order, we believe that the serial release of completed SER volumes will ensure transparency as to the staff's activities.

The current estimate calls for completion of the SER by January 2015. I believe the agency can work most effectively and efficiently to achieve that milestone by maintaining its current approach.

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**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 I 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?**

Answer

No. The staff exercised due diligence in conducting a thorough and systematic Spent Fuel Pool Study and regulatory analysis of expedited transfer of spent fuel to dry cask storage. Further, the results of the staff’s 2013 Spent Fuel Study are consistent with past studies’ conclusions that spent fuel pools are likely to withstand severe earthquakes without leaking, and that the risk of a large release due to spent fuel pool accidents is very low.

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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 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?**

Answer

- a. The Commission directed the staff to document its comparison of U.S. and Japanese regulatory requirements that were in effect at the time of the accident, focused on those areas most relevant to the sequence of events and accident mitigation capabilities at Fukushima. The staff was also directed to describe how those differences were factored into post-Fukushima actions taken by the NRC.

I am satisfied that the report prepared by the NRC staff fulfilled the stated objectives. The staff appropriately focused their attention on the requirements in the most relevant areas including protection from design basis natural phenomena, loss of ultimate heat sink, loss of electrical power, containment venting, and severe accident management. Further, I support the staff’s statement that “there should be no implication that the Fukushima accident and associated consequences could or would have been completely avoided assuming Japan had the same U.S. regulatory framework prior to the accident.” Therefore, as reflected in my approval of the post-Fukushima requirements, the experience gained from the Fukushima Dai-ichi accident warranted actions to enhance safety in the United States.

- b. Following the accident at Fukushima, the NRC focused on the course of events leading up to, during, and after the Fukushima accident to determine if our regulatory programs were sufficient for U.S. plants to prevent or mitigate the types of conditions that contributed to core damage and the release of radioactive materials following the earthquake and tsunami in Japan. As an example, the mitigating strategies implemented at US plants following the terrorist attacks of September 11, 2001, to cope with large fires and explosions may have helped in responding to an extended loss of electrical power and core cooling capability that occurred at Fukushima. However, this equipment was not designed or required to handle multi-unit events or survive extreme natural phenomena, such as a beyond design basis flood.

Upon identifying these limitations, the NRC’s response was to issue orders to U.S.

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plants to install additional portable power supplies and pumps that would be protected from extreme natural phenomena to ensure that equipment would be available to cool the reactors if all electrical power is lost, no matter what causes the loss of power. This new requirement is one of the most safety significant lessons to be learned from the Fukushima accident, and it was identified by reviewing the event itself, rather than studying the differences in the U.S. and Japanese regulations.

The staff's efforts to identify and implement the remaining Fukushima lessons learned follow a similar methodology. The NRC staff has had extensive discussions with other foreign national regulators, including the Japanese Nuclear Regulation Authority, to compare lessons learned and implementation strategies for improvements to plant designs and operations. These discussions have informed the staff's effort and confirmed that we have identified the appropriate lessons learned and possible improvements for U.S. plants.

- c. A detailed comparison of the regulatory systems in Japan and the U.S. would involve reviewing the governing legislation and regulations, as well as plant specific licenses, technical specifications, and guidance documents prepared by standards developing organizations, regulators, and industry groups. Such a review, in combination with other factors such as cultural and societal influences, would be necessary to fully understand how the differences between the regulatory systems are actually reflected in differences in plant design and operation. Given the resource implications of such a major study and the availability of insights from a variety of Japanese and international reviews, the NRC's comparison focused on those areas most relevant to the sequence of events and accident mitigation capabilities at Fukushima. The comparison did not assess differences in administrative requirements, plant licensing or license amendment processes, reporting and inspection programs, or technical areas unrelated to the sequence of events at Fukushima. Examples of technical areas that were not directly related to the sequence of events and therefore not included in the comparison are fire protection, security, and design basis accidents (e.g., losses of heat removal or inventory with AC power available).

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Questions for Commissioner Ostendorff  
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?**

Answer

Through my periodic interactions with Chairman Macfarlane, I was aware that she had some reservations about certain provisions of H.R. 3132.

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**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?**

Answer

I have previously responded to questions for the record (July 24, 2012, House Energy and Commerce joint hearing entitled "NRC Policy and Governance Oversight") related to legislative reform of the Commission's governance structure and the Commission's function as a collegial body, stating that if no changes are made, the current legislative framework provides a viable structure. But, I continue to believe that three changes could be made to the legislation that would strengthen the Commission's function as a collegial body. Those changes dealt with the Chairman's responsibility for "developing policy planning and guidance," clarifying the Chairman's use of emergency powers, and the reporting structure of the Offices of Congressional Affairs and Public Affairs. I believe H.R. 3132 would address those concerns.

My staff and I are available to provide insights and comments on your work with H.R. 3132.

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**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?**

Answer

- a. I have long believed that a formal declaration upon the invocation of emergency authority would add clarity to the Commission’s response and be beneficial to the leadership and management during an emergency.

The recently enacted Public Law 113-76, which makes appropriations for fiscal year 2014, and other purposes, also addresses this issue. Section 402 directs the Chairman of the Nuclear Regulatory Commission to notify the other members of the Commission as well as certain named Congressional Committees not later than 1 day after the Chairman begins performing functions under his or her Section 3 authority. I believe this is a reasonable approach.

- b. If the Chairman believes that it is necessary, the Chairman should be allowed to exercise emergency authority for the duration of the emergency. At the same time, I believe that the language in H.R. 3132 regarding limitations and extensions of emergency authority is very reasonable.

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**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?**

Answer

The Reorganization Plan No. 1 of 1980 states that emergency authority pertains “to an emergency concerning a particular facility or materials licensed or regulated by the Commission.” I believe the statute is clear: if there is no emergency that specifically affects an NRC-licensed facility, the Chairman may not exercise his or her emergency authority.

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**5. During an emergency, the chairman or a designee acts as the Executive Team Director. NRC briefing material 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.**

Answer

I do not believe that a formal declaration of an emergency would be burdensome.

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**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?**

Answer

At a high level, Reorganization Plan No. 1 of 1980 sets forth the general circumstances that would enable a Chairman to exercise emergency authority (i.e., there must be “an emergency pertaining to a particular facility or materials licensed or regulated by the Commission”). The Internal Commission Procedures and various historical memoranda also provide additional guidance regarding the circumstances or actions that would allow a Chairman to exercise emergency authority. There could be value in creating a procedure that accounts for these; however, it would be important to retain flexibility to respond to an extraordinary circumstance that may not be envisioned.

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**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?**

Answer

I believe that the language in H.R. 3132 regarding notification of the public, the Congress, and fellow Commissioners is reasonable.

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**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?**

Answer

This approach seems reasonable.

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**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?**

Answer

The current Internal Commission Procedures state that "it is recommended that the Chairman provide notice to the other Commissioners and the NRC staff that an emergency status under Section 3(a) has been entered." In my opinion, these Procedures can be strengthened and clarified. The recently enacted Public Law 113-76, which makes appropriations for fiscal year 2014, and other purposes, addresses this issue. Section 402 directs the Chairman of the Nuclear Regulatory Commission to notify the other members of the Commission as well as certain named Congressional Committees not later than 1 day after the Chairman begins performing functions under his or her Section 3 authority. I believe this is a reasonable approach and our Internal Commission Procedures should be changed to reflect this language.

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

Answer

This approach seems reasonable.

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**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?**

Answer

Yes, emergency planning and communications planning are effective forms of preparation for potential future emergency situations.

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**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.**

Answer

Reorganization Plan No. 1 of 1980 states that the Chairman “shall determine the use and expenditure of funds of the Commission, in accordance with the distribution of appropriated funds according to major programs and purposes approved by the Commission.” The NRC’s current Internal Commission Procedures (ICPs) describe in more detail the budget process followed by the Commission. As approved by the Commission, the ICPs state that as part of the Commission’s collegial functions, the Commission revises budget estimates and determines the distribution of appropriated funds according to major programs and purposes. As a best practice, the initial step in this process at the Commission level is for the Chairman to provide high-level planning objectives for budget development and prioritization of planned activities to the Commission for review and approval. This is done prior to the start of the annual budget formulation process.

The Chairman is also responsible for proposing to the Commission the distribution of appropriated funds according to the agency's major programs and purposes. The Commission is responsible for review and approval of the Chairman’s budget proposal.

Our ICPs provide a suitable process for collegial budget formulation, review, and approval and I do not believe any changes are needed.

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**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?**

Answer

The Internal Commission Procedures (ICPs) is an internal document that is the product of collegial decision-making by the Commission. The ICPs set forth the procedures governing the conduct of our business at the NRC. Therefore, the Commission is the proper body to oversee the implementation of the ICPs.

I do not believe legislation is needed to authorize any specific action by the Commission with respect to a Chairman's operations under the ICPs. As a Senate-confirmed official, I took an oath of office to well and faithfully discharge the duties of my office. I take this oath seriously and believe that I have an obligation, regardless of legislation, to the NRC, its staff, and the American people to ensure the proper functioning of this agency.

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**14. The NRC Inspector General issued a report “*NRC Chairman’s Unilateral Decision to Terminate NRC’s 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 relative [sic] 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.**

Answer

- a. The Internal Commission Procedures (ICPs) provide a comprehensive and systematic structure that, when followed, ensures that voting is handled in a timely manner and that the Commission functions effectively. The circumstances associated with the SECY-10-0102 were an unfortunate anomaly and are not likely to be repeated.
- b. The ICPs provide a comprehensive, clear process to guide Commission action on adjudicatory matters. The ICPs provide that Commissioners’ votes on Commission papers—including adjudicatory papers—are normally requested in 10 business days. The ICPs further provide that approval of extensions of time to vote on an adjudicatory paper must be given by a Commission majority. Once voting is complete on an adjudicatory paper, the NRC adjudicatory staff will submit the draft final order to establish a majority position on the decision. Commissioners at that time have an opportunity to make changes to the order and/or incorporate additional views. As soon as a majority position on the decision has been established, the Secretary of the Commission will poll the Commission on scheduling the affirmation of the decision, and an affirmation will then be scheduled to obtain a formal vote of the Commission.

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- c. In view of the robust internal procedures already in place, no revisions to the ICPs—or other mechanisms—are needed to ensure that the ICPs are enforced. Each adjudication is different. The Commission continues to work collegially, taking into account all Commission priorities, to ensure the issuance of reasoned, thoughtful decisions based on informed adjudicatory records, consistent with the Commission's stated goal of achieving prompt resolution of adjudicatory disputes.

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The Honorable Lee Terry

**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.**

Answer

As I have stated before, if no changes are made to Reorganization Plan No. 1 of 1980, the current legislative framework provides a viable structure. I believe that certain of the other provisions could have unintended consequences, prove difficult in implementation, or are unnecessary. For example, unlike Reorganization Plan No. 1 of 1980, the bill does not specify that the Chairman has responsibility “for developing policy planning and guidance for consideration by the Commission.” I have previously supported changing the Reorganization Plan to amend the Chairman’s responsibility from “developing policy planning and guidance” to “developing plans and guidance on established Commission policy.” The bill takes my previous position a step further by eliminating the Chairman’s responsibility entirely. While this provision is certainly workable, I believe the Chairman should have the lead for certain matters based on established Commission policy.

Further, in H.R. 3132, emergency functions would be limited to “responding to, issuing orders respecting, advising United States civil authorities and the United States public about, and directing and coordinating actions relating to” the emergency. The Reorganization Plan, on the other hand, lists broader activities, including “determining specific policies,” and does not limit the function of advising civil authorities and the public to “United States” audiences. There could be a circumstance where in an emergency a Chairman would need to potentially act expeditiously on a new policy not-yet-approved by the Commission and there is no time to reach a Commission decision. I would not want legislation to be an impediment to that.

The bill provides that any officer or employee may communicate directly with the Commission, or any Commissioner, on any “critical problem” or “matter of public health or safety or common defense and security” that “is not being properly addressed.” Personally, I have an open door policy and support any employee that wants to meet with me about any issue having the ability to do so. I believe employees already feel the ability to do so and thus do not believe legislation is necessary to address this concern.

Regarding voting matters, H.R. 3132 would require each Commissioner to vote on a decision appealed from the Board within 90 days of receiving final briefs and once a majority position has been established, any Commissioner that has not yet voted would have 3 days to vote or be excluded from voting. I appreciate the reasoning for this; however, many times this is simply not feasible for some of the more complex matters. I work hard to adhere to the ICPs in the way I conduct my business as a Commissioner and my goal has always been, and will always be, to address all voting matters, both for policy and adjudicatory items, within the timeframes of the ICPs. I have found that the ICPs provide a comprehensive and systematic structure that when followed allows the Commission to function effectively.

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Finally, on one additional voting matter, the bill states that if no majority position is established because of a tie vote, publication of any decision (including any adjudicatory orders and direction to the staff) would be required within 30 days after voting is completed. In practice, I do not know how a decision could be published if there is no majority position and the Commissioners have not yet determined that the vote resolutions process is complete.

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

Answer

I believe that my previous answers provide my opinions on H.R. 3132.

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**Follow-Up Questions for Written Submission**

Questions for Commissioner Ostendorff  
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.**

Answer

As the world's preeminent nuclear regulator, international activities are an integral part of the Nuclear Regulatory Commission's work, and are managed in a manner consistent with the NRC's domestic, organizational, and programmatic priorities. The Commission's foreign travel is guided by the importance of engagement with a nuclear community that grows more global every day. Our travel covers many issues ranging from the sharing of nuclear power plant operating experience, collaborating with regulatory counterparts on the import and export of nuclear materials and equipment, fulfilling nonproliferation objectives, and supporting international conventions and treaties. As Commissioners, we also help represent the NRC in our close working relationships with nuclear agencies in more than 35 countries. In my personal opinion, my overseas travel has been consistent with U.S. government objectives and is appropriately undertaken.

The NRC's international activities and the Commission's foreign travel focus on engagement with countries to exchange experience related to both radiological materials and nuclear power plant operating, construction, and licensing activities that are directly applicable to nuclear safety and security in the United States. By traveling overseas to engage with senior international regulatory counterparts, Commissioners share regulatory insights concerning both radioactive materials and operating experience information from other countries that can be applied to the domestic program. These meetings also serve as vehicles for the health and safety assistance the NRC supplies to less-developed countries in their attempts to prevent accidents and to develop and improve their regulatory capabilities and their nuclear safety infrastructure. As the senior-most officials of the NRC, members of the Commission act as a force-multiplier in the promotion of nuclear safety and have an unparalleled ability to influence key international activities. Thus, by building these relationships with senior nuclear regulatory officials around the world, we help facilitate the NRC's strategic goal to support U.S. interests in the safe and secure use of nuclear materials and in nuclear nonproliferation both at home and abroad.

While on travel, be it international or domestic, my work as a Commissioner does not stop. I continue to conduct my domestic responsibilities, such as reviewing policy papers, voting on issues of importance before the Commission, and maintaining continuous involvement in Commission matters, even if this requires working at non-traditional hours.