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Subcommittee on Energy & Water Development

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Post Hearing Questions from the March 31, 2011
Hearing on 2012 Budget Request for the Nuclear
Regulatory Commission and Development of Energy's
Nuclear Energy Programs (EDATS: OEDO-2011-0256)

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SPECIAL INSTRUCTIONS OR REMARKS:

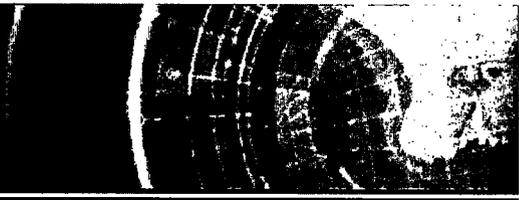
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QUESTIONS FOR THE RECORD
SUBCOMMITTEE ON ENERGY AND WATER DEVELOPMENT
HOUSE COMMITTEE ON APPROPRIATIONS

**Hearing on the 2012 Budget Request for the
Nuclear Regulatory Commission
and
Department of Energy's Nuclear Energy programs
Thursday, March 31, 2011**

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Opening Questions

Fukushima power plant in Japan

1. Impact of events in Japan on nuclear industry

As I mentioned in my opening remarks, the earthquake and tsunami have created a terrible tragedy for the people of Japan, and our thoughts are with them. I'd like take a moment to discuss with you, Dr. Lyons and Chairman Jaczko, what impact you believe the events at the Fukushima Daiichi nuclear plant in Japan is having—or might have—on the nuclear industry in the United States and abroad.

- Given that nuclear power is and will play an important role in our energy mix, how do you think these events might impact your programs and the nuclear industry in the short-term? And how—if at all—might it impact where we're heading in the long-term?

NRR

2. Safety of U.S. reactors compared to Fukushima

Of course, there's a question many people are asking while we've been watching Japan struggle with the Fukushima power plant: "If it happened at the Fukushima power plant, could it happen here?" I'd like to take a minute to get your thoughts on that question.

- First, I hear disagreement over whether there was a flaw in the reactor design at Fukushima, or whether there was a systems issue—a failure to adequately protect the reactor's auxiliary systems. What is your take on that question, Dr. Lyons and Chairman Jaczko?
- I understand that the United States has nuclear reactors of the same "make and model" as the Fukushima Daiichi reactors—six U.S. reactors have the same reactor and secondary containment structure designs, I believe. Do our plants have the same safety risks as Fukushima, or are there regulatory differences, construction differences, and other precautions that make our plants safer?

NRR

NRR

NRR

- What about hydrogen venting? Do our reactors have different venting systems or other precautions that would prevent the hydrogen explosions that affected some of the outer containment building at Fukushima?

NRO

- We've talked about our current reactors, but what about the new class of reactors that are just starting construction in the United States? Are those "Gen III+" reactors safer than the Fukushima Daiichi reactors? Can you explain the safety advantages?

NRO

- Is the next generation of reactor designs beyond Gen III+, like small modular and high temperature gas reactors, even safer? What would make them safer?

3. Cooperation with Nuclear Regulatory Commission

NRR

- What are the obstacles to effective cooperation on licensing and safety oversight between the Department and the Nuclear Regulatory Commission?

¹
d Energy

NRR

- What is being done to remove those obstacles?

Nuclear Regulatory Commission

4. Elimination of the Integrated University Program

Dr. Lyons and Chairman Jaczko, the budget requests for both of your agencies eliminate funding for the University Program, which this Subcommittee has funded in the past to support a pipeline of nuclear engineers and scientists coming out of American universities.

- With the American nuclear engineer workforce nearing a time of high retirements and the pipeline of graduating students still not growing sufficiently to fill the spots, why have you eliminated the University Program—especially given our need to keep our reactors safe both now and in the future?
- We have heard that only a small portion of nuclear engineers currently go to work for industry. Given that, why do you believe that industry will fill in financial support in place of these university programs, as stated in the Department of Energy's budget request?

5. Lawsuits against the U.S. government

Chairman Jaczko, there was a time when the NRC was seen as a reasoned, non-political safety and technological regulatory body. Now, it seems as if your actions are generating more and more lawsuits. For instance, your decision to allow spent nuclear fuel on-site for 60 years is one of the recent court challenges you're facing. I know of at least three states which are suing the NRC over this.

There are at least two other cases pending against the government specifically because of the Administration's attempts to shut down Yucca Mountain— one to stop the collection of Nuclear Waste Fund fees, and another to show that the Department of Energy doesn't have the authority to remove the Yucca Mountain license application...as was confirmed by the NRC's own Atomic Safety and Licensing Board panel.

- How many lawsuits is the U.S. government defending against, resulting from the government's failure to assume responsibility of

spent nuclear fuel or otherwise resulting from the Administration's attempts to shut down Yucca Mountain?

- How much funding is in the fiscal year 2012 budget request for the NRC and other U.S. government agencies for legal fees and/or damages resulting from these or expected cases? What are your estimates for future years?

6. NRC Actions related to Japan

NRR

- Chairman Jaczko, what is the NRC doing to support efforts in Japan to stabilize and secure the damaged nuclear plants?

NRR

- The NRC announced last week the formation of a task force to conduct both a short- and long-term analysis of the lessons we can learn from the events in Japan. Realizing that we don't yet have all the information on Japan or the task force's recommendations, what types of short-term changes to your regulatory framework do you think are possible? What about long-term changes?

NRR/NRO

- Will the NRC continue processing existing license applications while the task force conducts its analysis? *renewals/new*

NRR/NRO

- How will the task force's timeline of 90 days for its short-term analysis and approximately six months for its long-term recommendations impact existing license applications?

renewals/new

7. Review of existing facilities

Chairman Jaczko, your budget request includes an increase of \$13.7 million for oversight of operating reactors. Since you submitted this request, you have been charged by the President to undertake a comprehensive review of all nuclear facilities, and last week the NRC announced a task force whose work I assume represents at least part of this review.

NRR/
NMSS

- What is the scope of this review? Are enrichment facilities, waste repositories, spent fuel pools, and non-commercial reactors all included?

NRR/NRO

- Do you expect that applications for reactor extensions or power uprates will be slowed because of this review? What about new reactor licenses?

NRR

- How long will it take for you to complete this review? Will the Task Force's anticipated timeframe of six months for its long-term analysis conclude the review?

NRR/OCFO

- How much funding do you expect this review to cost, and you expect the 2012 request will need to change in order to accommodate it?

8. Review of licenses for new plants

Chairman, your request for licensing activities for new plants is a slight increase over fiscal year 2010. It looks like your budget would fund two new combined licenses and continued work on new designs and early site permits.

NRO/OCFO

- Have your plans changed following the tragedy in Japan?

9. Japan 50-mile perimeter?

Chairman Jaczko, your role as Chairman of the NRC should be to provide authoritative guidance on nuclear energy issues. It was reasonable that the government turned to you to give some perspective for U.S. plants following the tragedy in Japan. However, you made a few comments which got you cross-wise with the IAEA and the Japanese authorities.

Could you clarify how you developed the "50-mile" evacuation zone for American citizens around the Fukushima plants? Since this is far wider than the 12 mile zone recommended by IAEA and Japanese authorities, your recommendation caused quite a bit of concern and confusion.

NSIR

- What scientific basis did you have for your recommendation?

NSIR

- You said at the time that your recommendation was based on the "possibility of scenarios that we haven't seen yet." What did that mean, precisely?

NSIR

- Last week, the NRC clarified that its 50-mile recommendation was based on a determination that releases from the Fukushima plant “could...possibly exceed conservatively set safe radiation-exposure limits” based on “limited data and conservative assumptions.” Since your recommendation was far more conservative than that of the Japanese or IAEA experts, you may have had additional information that they did not have...or, perhaps, you didn’t agree with their recommendation. Which was it? What did you know that they didn’t, or what specifically did you disagree with?

10. Claim that the spent fuel ponds in Japan were empty

Chairman Jaczko, your claim on March 16 that the spent fuel ponds at Fukushima’s Reactor 4 were dry was factually incorrect and caused not a small amount of concern, both within Japan and internationally. What conclusive evidence did you have before you made this claim?

NSIR

- Please submit for the record this evidence, since the information that we are receiving is that because the area was covered with carbon, the pictures were inconclusive.

11. Oversight of new facilities

Chairman, one of the largest increases in your request is for oversight activities of new plants. According to your request, you will need to be inspecting a total of four new reactors expected to be under construction this year, an increase of two over last year.

NRO

- What are the four reactors you expected to be under construction this year? Have there been any changes to these plans?

12. Carryover funds

Chairman, the NRC has in the past carried over significant funding.

- What is the estimate of your carryover funds for fiscal year 2010?
- Do you think this amount is appropriate? If not, what are you doing to “spend down” the funding to an appropriate level?

- Can we expect to see a reprogramming?

13. Construction Funding in the request

Chairman, it's somewhat buried on page 47 of your budget request, but your New Reactors program has \$21 million of "one-time" costs associated with the design, construction, and outfitting of a new headquarters office building. I'm not sure how this is one-time, since there is funding in the FY10 and FY11 requests as well for construction of a new office building.

- What is the total is this budget request for construction activities, and how much has already been spent on these activities?
- What is the projected total cost?

Yucca Termination

14. Controversy over withholding final report on Yucca Mountain

Chairman Jaczko, the President unilaterally shut down the Yucca Mountain project over the protests of the vast majority of Americans – this is likely one of the least “democratic” actions I have seen from an Administration since I have been in Congress.

One of the greatest tragedies is that the Administration’s approach is to halt any useful understanding from being gained through the expenditure of over \$12 billion in research on the site. Under a Freedom of Information Act filing, your staff recently released a heavily redacted version of Volume 3 of the Safety Evaluation Report...the document which is to show your staff’s technological and scientific qualifications of the site. This report should have been released in November, 2010. Now your staff is saying that they’re not going to even archive an unredacted version because, as they put it, the information is “predecisional” and could cause confusion.

- Chairman, this report was due months ago. Why has no decision been made?
- If I’m to understand correctly, this report is going to be buried because it’s predecisional, and the reason it’s predecisional is that the Administration killed the program?
- Closing down the program before the license application could be approved is shameful enough, but hiding what has been learned betrays the trust of the American people and literally wastes years of hard work and billions of dollars. Chairman Jaczko, what is in this document that the Administration would find so damaging if it were made public? That, perhaps, the site is technically qualified for a million years?
- The Administration may continue to insist that this program is shut down, but you can be assured that it is not. This report must be released, and this project must move forward.

15. Administration's plan to assume responsibility of spent fuel

NMSS/AGC
Chairman Jaczko, I would generally ask this to the Department of Energy, but since you're using your position as Chairman of the NRC to fulfill the Administration's plan to shut down Yucca Mountain over the objections of Congress, I figure you can answer this instead. The Associated Press reported last week that the U.S. has 71,862 tons of spent nuclear fuel at reactors in the United States – waste that is stranded there because the Administration killed the Yucca Mountain project. While the waste is safe where it is, estimates are that the pools contain four times the amount of fuel than they were designed to handle. Given that the American public is rightly concerned about this waste spread across the country at 129 sites, especially in the wake of what happened in Japan, what is the Administration's timeline for fulfilling its obligations in assuming responsibility of this waste?

- Frankly, I find the Administration's lack of a real plan not just absurd, but a waste of taxpayer resources. The American public is worried about keeping this waste in pools, and I can't understand why the Administration would support this vulnerability when it can be stored safely at Yucca Mountain.

Additional Member Questions

16. Additional Questions from Mr. Simpson of Idaho

Dr. Jazcko, in your testimony you have repeatedly characterized the voting process in adjudicatory matters as a less than formal process. This seems inconsistent with statements provided by other Commissioners and the procedures identified in Chapter III or the Commission's Internal Procedures. Appendix 3 of those procedures provides an example voting sheet to be used in matters pending before the Commission.

- Was this voting process used in establishing the Commission's position on this matter and were these votes sheets submitted to the Secretary of the Commission for tally and reporting? Or was some other less formal process used? Please clarify the process used in voting and provide any changes to Commission procedures that may not be publicly available.

While this Committee has no intention of presuming the outcome of the Commission's decision, we do not understand why you have not made a timely closure to this matter. In your testimony, you state that in adjudicatory matters, processes used to achieve decisions are different from routine matters.

- Would you explain that process?
- Also, please clarify if the process described in Appendix 5 of the Commission's Internal Procedures is used in resolving 2-2 votes in adjudicatory matters and if not, what process is followed?
- Also, please have the Secretary for the Commission review the historical records and provide the following for each matter before the Commission where a quorum of Commissioners have affirmed their votes but a majority decision was not reached:
 - a. A brief description of the matter.
 - b. The date when the matter was first brought to the Commission.
 - c. The date when a quorum of Commissioners filed their votes with the Secretary of the Commission.

- d. The date when all participating Commissioners filed their votes with the Secretary.
- e. The length of time between the last filing of votes and the issuance of a draft Staff Requirements Memorandum (SRM) or order.
- f. The length of time between the draft SRM or order and the completion of voting on the final SRM and order.
- g. The length of time between the completion of voting on the final SRM or order and the affirmation of their vote by the Commission.
- h. A copy of each final SRM or order and affirmation statements, if any, by individual Commissioners.

Dr. Jaczko, in your testimony you stated that the Commission policy to begin to close down the review of the application was established in the Commission's FY-11 Budget.

- Yet is it not true that policy was established when the NRC only had 3 Commissioners, two of whom have publicly stated that you are not correctly the implementing the Commissions' decision?
- Furthermore, this matter was not taken up by the current Commission and therefore is it not true you have acted unilaterally and did not seek the Commission's approval?
- How is that consistent with Commission procedures and statements you have made before this committee?

Dr. Jaczko, you testified that "there are ongoing discussions" among the commissioners to try to reach an agreement on an final order.

- Is that correct?
- When was the last time that such "ongoing discussions" have occurred between you and your fellow commissioners?
- Isn't true that there have been no such discussions since September 2010. Yes or no?

To be requested of all Commissioners to respond-- Chairman Jaczko has stated on several occasions that this matter is under active deliberation within the Commission.

- Would you please explain that deliberative process and what actions each of you are taking to achieve a timely resolution of this matter?

Dr. Jaczko, you testified that “it was your view” supported by the general counsel that budget document provided the guideline and the direction to move forward on Yucca close out activities.

- Please provide the GC’s memo and all citations of precedents for this position.
- Was your view supported by all the other commissioners at that time?

Dr. Jaczko, is there a time limit in which the Commission is required to render a final decision to uphold or reverse the ASLB?

Will you agree not to dissolve the ASLB until you have issued a final order on whether to uphold or reverse their decision that DOE lacks the authority to withdraw the Yucca license?

Q&A FORMAT

QUESTION 5. Is a Construction and Operating License (COL) application required to reference a certified design or design certification application?

ANSWER.

No. As allowed by NRC regulations, applicants can submit a combined license (COL) application that does not reference a certified design or a design certification (DC) application. The design certification process supports the Commission's desire for increased plant standardization since it provides safety advantages while maximizing regulatory review efficiency. The NRC has encouraged, but does not require, the use of the design certification process.

Most numbered questions have multiple bulleted questions, so answer them on separate sheets as 5(A), 5(B), 5(C), etc