

BARBARA BOXER, CALIFORNIA, CHAIRMAN

MAX BAUCUS, MONTANA
THOMAS H. CARPER, DELAWARE
FRANK R. LAUTENBERG, NEW JERSEY
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK

JAMES M. INHOFE, OKLAHOMA
DAVID VITTER, LOUISIANA
JOHN BARRASSÉ, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
LAMAR ALEXANDER, TENNESSEE
MIKE JOHANNIS, NEBRASKA
JOHN BOOZMAN, ARKANSAS

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
RUTH VAN MARK, MINORITY STAFF DIRECTOR

April 6, 2011

The Honorable Gregory B. Jaczko
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Chairman Jaczko,

I appreciate your hard work on the nuclear accident at the Fukushima power plant, and your efforts to help the public understand its implications for the American nuclear power fleet. I do want to raise concerns about some aspects of your response, with the hope that you can resolve them fully and quickly.

My concerns stem from the confirmation in response to my staff's inquiries that the Nuclear Regulatory Commission has been operating in a state of emergency since the Tohoku Earthquake on March 11, 2011. In particular, I question whether:

- 1) You may not have followed law as it pertains to the delineation of emergency authority as provided in Reorganization Plan #1 of 1980 (PL 98-614); and
- 2) This action may have reduced the contributions of your experienced colleagues in monitoring the event and in decision-making.

Section 3 of the Reorganization Plan #1 states that the functions transferred to the Chairman are those pertaining to an emergency concerning a particular facility or materials licensed or regulated by the NRC. Your Congressional Affairs staff indicated that you invoked these powers when the NRC Operations Center entered "monitoring mode" at 9:46 AM on March 11th in reaction to the Tohoku Earthquake and resulting potential tsunami threat to U.S. plants. At this time, the crisis is unfolding in Japan and I am not aware that you issued any warnings to any U.S. licensee or regulated facility since March 11th. On the contrary, you have repeatedly stated publicly that U.S. nuclear plants are safe and indicated, as has the U.S. Environmental Protection Agency, that any radiation resulting from the Fukushima nuclear accident that reaches the U.S. will not be significant enough to impact public health. Given what has transpired, it would be helpful if you could provide the basis for your invocation of emergency authority.

Secondly, if your basis for invoking emergency authority was the potential threat of a tsunami affecting nuclear plants in California, that threat ceased on March 11th. Please provide your rationale for continuing to exercise emergency authority after March 11th and your

Chairman Gregory Jaczko
April 6, 2011
Page 2

expectations for when and under what conditions you anticipate returning the agency to non-emergency status.

Section 3 of Reorganization Plan #1 also states that the functions transferred to the Chairman in an emergency include declaring, responding, issuing orders, etc., relative to the emergency incident. Since March 28th was the first indication my staff received regarding your exercise of emergency authority—and apparently no public declaration was made—I am concerned that any effort by you to declare an emergency has been less than ideal, especially given your commitment to openness and transparency.

Lastly, Section 3 of Reorganization Plan #1 states that the Chairman shall, to the maximum extent possible, inform the Commission of actions taken relative to the emergency. On March 30, my staff queried all four of your fellow commissioners regarding their knowledge of any such declaration. All four offices indicated that none of the commissioners received any communication from you declaring your intent to exercise emergency powers. It would be helpful if you could provide an explanation as to why the commissioners were apparently not informed of your action.

By April 8th, please provide the information requested above and any legal analysis prepared prior to March 30, 2011 that supports the transfer of functions from the Commission to you including the basis for continuing to exercise those powers.

I look forward to working with you as the NRC addresses the Japan nuclear accident, and to ensure the safety of the nation's nuclear fleet.

Sincerely,



James M. Inhofe
Ranking Member
Committee on Environment and Public Works

Cc: Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff