

**WRITTEN STATEMENT OF
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U.S. NUCLEAR REGULATORY COMMISSION
TO THE
HOUSE ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
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Good morning, Chairman Shimkus, Mr. Green and members of the Committee. Thank you for inviting me to participate in your hearing today. My name is Janet Kotra. I am a senior scientist and project manager in the Division of High-level Waste Repository Safety at the U.S Nuclear Regulatory Commission (NRC). I joined NRC more than 27 years ago as a postdoctoral fellow with the NRC's Advisory Committee on Reactor Safeguards. Subsequently, it was my privilege to serve as a technical assistant for two prior Commissioners, one Republican, and one Democrat. Since 1993, I have worked in High-level Waste Repository Safety with NRC's technical staff. I was one of the major contributors in developing NRC's Part 63 regulations for the proposed Yucca Mountain Repository. As leader of the HLW public outreach team, it was my job to organize and conduct more than three dozen public meetings and workshops in Nevada and California to explain NRC's oversight role, regulatory process and review procedures. In addition, since 2006, I have been honored to serve as Chairman of the OECD Forum on Stakeholder Confidence. The Forum is an International Organization, based in Paris that examines factors that influence and contribute to public confidence in the area of radioactive waste management. In 2008, when NRC received the Yucca Mountain repository license application from the Department of Energy, I joined with my colleagues, other scientists and engineers, on the NRC staff and at NRC's contractor, the Center for Nuclear Waste

Regulatory Analyses, in carrying out an independent safety review of the Yucca Mountain license application and in preparing portions of the NRC staff's Safety Evaluation Report. Recently, I was honored to accept an invitation to serve on an international peer review panel, established for the government of Sweden, to evaluate the development and communication of the safety case submitted as part of an application for a geologic repository in that country.

One of the most satisfying and enriching aspects of my job with NRC was the ten years or so I spent on the road meeting with people in the Affected Units of Local Government and the Affected Tribe near Yucca Mountain, Nevada. I spoke with people about NRC's oversight and review processes. I helped individuals and local officials understand their options for participating in NRC's hearing process. I explained how the NRC staff reviews and considers public comments on proposed rule changes. I listened to people's concerns and learned how to be more effective as a public servant. Of the comments I heard over and over again was, "how will NRC make its safety decision?" and "how can we affect NRC's decision or take part in your process, if we don't understand how your decisions are made?" Over the course of ten years we worked at becoming more transparent. We worked hard to make our speech clearer, our documents more available and our presentations more understandable. We assured our audiences that once the application came in, we, as independent scientists and engineers, would conduct a thorough, technically sound, and fair review. We also promised that our findings would be made available for all to see and evaluate for themselves. And then, those findings, along with the application and all contentions—there were almost 300--admitted by an independent hearing board would be subject to an open and impartial public hearing before any decision would be made to deny or authorize construction of a repository at Yucca Mountain. I assured people over and over again that this would be the case, because I believed it. I believed it because this is how the NRC's licensing process has worked when NRC has decided whether or not to license reactors and other large nuclear facilities throughout our more than 35-

year history. And I believed it because it is consistent with the law, consistent with NRC's regulations, and consistent with our role as an independent safety regulator as established for us by Congress.

Then, as reported recently by the NRC's Inspector General, Chairman Jaczko ordered the Director of my office, the Office of Nuclear Materials Safety and Safeguards, to postpone issuance of Safety Evaluation Report Volumes 1 and 3. Staff and managers of the division of High-level Waste Repository Safety became concerned that the entire Commission might not be fully aware of the policy, legal and budgetary consequences of such redirection and guidance from the entire Commission was called for. I was directed to prepare a draft memorandum for the five Commissioners to be signed by the Office Director. We hoped that given an honest assessment of the facts, fair-minded members of the Commission would see the need to provide the staff with clear policy direction as we struggled to honor conflicting duties and instructions. We were told, however, that the memorandum should make no reference to any of the related policy issues, and that I should prepare it as a "status report." Over the coming months, using a highly irregular process, I was asked to incorporate a very large number of changes from senior agency managers. I was willing to comply, despite my growing reservations, so long as any description of the program's history and status remained reasonably accurate and consistent with my knowledge of the facts.

Later, in September, it became clear that, rather than just postpone issuance of individual Safety Evaluation Report volumes, the Chairman's intent was to terminate the staff's safety review altogether. Using the continuing resolution as justification, the Chairman directed that all work on the SER must stop (including Volume 3 on post closure safety, which was already complete, and undergoing management review). Written guidance was transmitted later on October 4, 2010. The Chairman met with the staff's Yucca Mountain team just after Columbus Day. He explained that the decision to shut down the staff's review of the application was his

alone and that the staff should move to orderly shutdown of NRC's Yucca Mountain program. This, despite the fact that, then, as now, the Nuclear Waste Policy Act remains in effect, the hearing process continues, and no Commission decision has yet been issued on whether the application may be legally withdrawn.

As the months wore on, and work on the memorandum continued, formal and informal comments from the Deputy Executive Director for Operations, the Chief Financial Officer and the General Counsel were incorporated. These comments repeatedly diluted or contradicted the language prepared by the High-level waste staff and staff of the Atomic Safety and Licensing Board Panel. Both had tried to include text describing policy, programmatic and budgetary difficulties faced by two offices struggling to cover the costs of shutting down a complex and valuable national program and infrastructure, while at the same time supporting an ongoing hearing.

Finally, in late January, 2011, I could no longer, in good conscience, agree with the memorandum as written. I formally withdrew my concurrence, consistent with NRC's procedures, on February 1, 2011. I did so because of senior managers' insistence on changes that, to me, implied that it was the NRC staff who voluntarily, or, worse still, on its own volition, terminated NRC staff's independent review of the Yucca Mountain License application, and sought to end support for a full and impartial hearing to review the application. To me, this was grossly misleading and unacceptable. In my experience, the staff members, who worked tirelessly to conduct a fair, independent and technically sound safety review, and to prepare the required Safety Evaluation Report, stood down from those obligations only with enormous reluctance and heavy hearts. The staff did not choose to abandon its duty under the law. The independent technical staff of NRC's Division of High-level Waste Repository Safety did not wake up one fine day and decide to terminate the statutory review of a license application under our review. We were directed explicitly by Chairman Jaczko to terminate the review. Yet, on

multiple occasions I was prohibited from including in the status report any declarative statement to that effect. As drafted, the memorandum made no reference to the facts surrounding the termination of the staff's review of the Yucca Mountain application. Without this crucial context, the reader is left with a mistaken impression that the termination and "orderly shutdown" of the licensing review and hearing was the staff's preferred and well-considered course of action, initiated by the technical staff. Nothing could be further from the truth.

In closing, as a member of NRC's technical staff, I remain deeply concerned that the groundbreaking regulatory work and accomplishments of many decades, made by my colleagues, not be lost or wasted. This seminal work is documented in the Draft Safety Evaluation Report volumes staff has prepared. Irrespective of what happens to Yucca Mountain, preservation and dissemination of the results of NRC staff's review and findings are of critical importance. The public deserves access to what we learned and accomplished during our safety review. If the Blue Ribbon Commission does indeed find that deep geologic disposal is "inescapable" as a solution for our nation's spent fuel and high-level radioactive wastes, the lessons that NRC's technical staff learned from reviewing and evaluating compliance of the first license application for a geologic repository in the U.S. must be preserved, studied and shared as the resources they truly are. Please help us, the NRC technical staff, keep the commitments we made to the public about the openness and transparency of NRC's safety review at Yucca Mountain. I implore you to take whatever action you deem necessary to allow completion and prompt, public release of the complete, unredacted and uncensored volumes of the NRC staff's Safety Evaluation Report. Thank you for your concern and attention to these important matters. I welcome any questions you may have.