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ONE HUNDRED TWELFTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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July 15, 2011

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

Dear Chairman Jaczko:

The Committee's investigation into the management and operations of the Nuclear Regulatory Commission (NRC) has led to new concerns about the control of information at the Commission. Specifically, it appears that you and your staff continue to restrict your fellow Commissioner's access to the advice and opinions of NRC staff and ignore established Commission procedures for collegial deliberation.

As you know, following the accident at the Japanese Fukushima Daiichi reactors, the Commission instructed NRC technical staff to establish a Task Force to perform both a near-term and long-term review of NRC "processes and regulations to determine whether the agency should make additional improvements to [its] regulatory system."<sup>1</sup>

On July 12, 2011, the Task Force provided the Commission with the results of the near-term review. Though the Task Force found no "imminent risk to public health and safety," NRC's technical staff made twelve recommendations to improve the agency's regulatory framework.<sup>2</sup> These recommendations reflected solely the findings of the Task Force and were not informed by substantial engagement with internal or external stakeholders.

Pursuant to the direction provided in the March 23, 2011 tasking memorandum, the staff delivered the near-term report to the Commission as a Notation Vote Paper.<sup>3</sup> As you are aware,

<sup>1</sup> U.S. Nuclear Regulatory Commission, Memorandum from Chairman Jaczko to R.W. Borchardt, Executive Director of Operations "Tasking Memorandum - COMGBJ-11-0002 - NRC Actions Following the Events in Japan," (March 23, 2011), *available at* <http://www.nrc.gov/reading-rm/doc-collections/commission/comsecy/2011/2011-0002comgbj-srm.pdf>.

<sup>2</sup> Press Release No. 11-127, U.S. Nuclear Regulatory Commission, "NRC's Japan Task Force Recommends Changes to Defense in Depth Measures at Nuclear Plant; Cites Station Blackout, Seismic, Flooding and Spent Fuel Pools as Areas for Improvement." (July 13, 2011) *available at* <http://pbadupws.nrc.gov/docs/ML1119/ML11194A079.pdf>.

<sup>3</sup> (Notation Vote Paper) indicates an issue requiring consideration by the Commission or consultation with the Commission prior to action by the staff, but not requiring collegial deliberation among Commissioners or a formal

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a Notation Vote Paper falls within the category of documents – known as SECY papers – used by staff to deliver information to the full Commission, via the Secretary of the Commission, for consideration and guidance.

Consistent with established NRC procedures, when the Commission received the near-term report it was accompanied by a SECY paper summarizing the staff's findings and positions. The Committee has learned the original SECY paper included a suggestion from the staff that the recommendations presented in the near-term review may warrant greater stakeholder participation prior to action by the Commission. Subsequently, the Secretary of the Commission was instructed to withdraw the SECY paper.

The Commission later received a substantially revised version of the SECY paper. Apparently, the new version no longer contains suggestions that the staff originally included for consideration by the Commission. Despite the fact that this document is correspondence from the staff to the Commission, we have learned that the revised SECY paper may have been drafted or influenced by your personal staff.

If a SECY paper developed by the NRC staff was in fact withdrawn without input from your colleagues on the Commission, this would demonstrate yet another example of your disregard for the established collegial protocols of the NRC. As I am sure you are aware, the Internal Commission Procedures state:

A SECY paper or COMSECY will be returned to the staff without action if a majority of the Commissioners participating subscribe to that course of action. If the staff recommends withdrawal of a SECY paper or COMSECY, the staff must explain to the Commission the basis for its recommendation in writing. The Commission can consider such staff recommendations during the voting process.<sup>4</sup>

Obstruction of any Commissioner's full and timely access to the NRC staff, for either factual information or their unadulterated opinions, is completely unacceptable. In order to assist the Committee in understanding how this abrogation of Commission internal procedures occurred, please provide the following by July 29, 2011:

1. All drafts of SECY paper 11-00093. Include all drafts prepared by NRC staff, your staff, or anyone else at the NRC.
2. Documents and communications from you, your staff, Commission staff, members of the task force, or NRC staff referring or related to the withdrawal of SECY paper 11-00093.

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vote in a meeting, thereby lending itself to a written notation process. U.S. Nuclear Regulatory Commission, Internal Commission Procedures, *available at* <http://www.nrc.gov/about-nrc/policy-making/internal.html#Votes> (retrieved July 14, 2011).

<sup>4</sup> *Id.*

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July 15, 2011

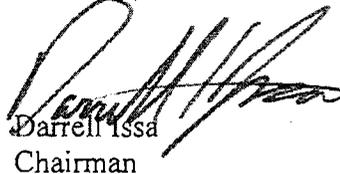
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3. Documents and communications from you, your staff, Commission staff, members of the task force, or NRC staff referring or related to the submittal of the Near-Term Report to the Commission, the Commission's action on the recommendations contained therein, the public release of the report, and the submittal of the report to any member of Congress.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact John Ohly or Jonathan Skladany of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa  
Chairman

Enclosure.

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable William Ostendorff, Commissioner  
U.S. Nuclear Regulatory Commission

The Honorable Kristine Svinicki, Commissioner  
U.S. Nuclear Regulatory Commission

The Honorable William Magwood, Commissioner  
U.S. Nuclear Regulatory Commission

The Honorable George Apostolakis, Commissioner  
U.S. Nuclear Regulatory Commission

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### Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.