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March 2, 2012

The Honorable Stephen Burns, General Counsel
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Mr. Burns:

I write to request information about Nuclear Regulatory Commission (NRC) Chairman Greg Jaczko's use of emergency authority conferred on the NRC Chairman by the Energy Reorganization Act of 1974 and Reorganization Plan No. 1 of 1980.

After the 1979 Three Mile Island (TMI) nuclear accident and the failures in communication and other response activities, the President's Commission on the accident at TMI chaired by John G. Kemeny ("the Kemeny Commission") made numerous findings related to the NRC's response to the accident, including one that states "With its present organization, staff, and attitudes, the NRC is unable to fulfill its responsibility for providing an acceptable level of safety for nuclear power plants¹." It also found that "The quality of information provided to the public in the event of a nuclear plant accident has a significant bearing on the capacity of people to respond to the accident, on their mental health, and on their willingness to accept guidance from responsible public officials," and "Neither Met Ed nor the NRC had specific plans for providing accident information to the public and the news media."²

In 1980, Congress enacted legislation to reorganize the NRC in the wake of the Kemeny Commission's report.³ That legislation set out the responsibilities of the five NRC Commissioners, and additionally delegated specific responsibilities to the Chairman. Among other provisions, the law states that:

- "The Chairman shall be the official spokesman for the Commission,"
- "there are hereby transferred to the Chairman all the functions vested in the Commission pertaining to an emergency concerning a particular facility or materials licensed or regulated by the Commission, including the functions of declaring, responding, issuing orders, determining specific policies, advising the civil authorities, and the public, directing, and coordinating actions relative to such emergency incident."

¹ http://www.pddoc.com/tmi2/kemeny/nuclear_regulatory_commission2.htm

² http://www.pddoc.com/tmi2/kemeny/publics_right_to_information.htm

³ <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0980/ml022200075-vol1.pdf>

- “To the maximum extent possible under the emergency conditions, the Chairman or other member of the Commission delegated authority under subsection (b), shall inform the Commission of actions taken relative to the emergency.”
- “(d) Following the conclusion of the emergency, the Chairman, or the member of the Commission delegated the emergency functions under subsection (b), shall render a complete and timely report to the Commission on the actions taken during the emergency.”

As you know, there has also been considerable public debate regarding the applicability of the 1980 emergency authority to an emergency whose origin was not in the U.S., despite the fact that the Fukushima earthquake, tsunami and subsequent meltdowns did have the potential to endanger both U.S. nuclear facilities and U.S. citizens living in the vicinity of the stricken reactors.

So that I may fully understand whether this public debate is of any practical consequence due to some action taken by Chairman Jaczko that he could not have taken absent his exercise of his authority using these emergency powers, I ask for your prompt assistance in responding to the following questions:

- 1) Did any action taken by Chairman Jaczko in response to the nuclear emergency triggered by the Japanese earthquake and tsunami *require* the use of the emergency powers conferred upon him in the 1980 reorganization act because it otherwise would not have been an action he could have taken using his non-emergency authorities?
- 2) If so, please fully describe each such action, along with your legal analysis as to why the action could not have been taken absent the exercise of the Chairman’s emergency authorities.

Thank you very much for your consideration of this matter. Please provide your response no later than close of business Friday, March 9, 2012. If you have any questions or concerns, please contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,


Edward J. Markey