

MOTION INFORMATION STATEMENT

Docket Number(s): 15-1330-cv

Caption [use short title] \_\_\_\_\_

Motion for: Judicial Notice

Brodsky v. United States Nuclear Regulatory Commission, 15-1330-cv

Set forth below precise, complete statement of relief sought:

Plaintiff-appellant requests that this Court take  
judicial notice of the fact that several articles  
were published recently raising a concern  
about terrorism at nuclear power plants.

MOVING PARTY: Richard Brodsky

OPPOSING PARTY: United States Nuclear Regulatory Commission

Plaintiff  Defendant  
 Appellant/Petitioner  Appellee/Respondent

MOVING ATTORNEY: Daniel J. Kramer, Esq.

OPPOSING ATTORNEY: Benjamin H. Torrance, Esq.

[name of attorney, with firm, address, phone number and e-mail]

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Court-Judge/Agency appealed from: United States District Court for the Southern District of New York (Preska, J.)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):  
 Yes  No (explain): \_\_\_\_\_

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?  Yes  No  
Has this relief been previously sought in this Court?  Yes  No

Requested return date and explanation of emergency: \_\_\_\_\_

Opposing counsel's position on motion:  
 Unopposed  Opposed  Don't Know

Does opposing counsel intend to file a response:  
 Yes  No  Don't Know

Is oral argument on motion requested?  Yes  No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?  Yes  No If yes, enter date: May 23, 2016

Signature of Moving Attorney:  
s/ Daniel J. Kramer Date: April 15, 2016

Service by:  CM/ECF  Other [Attach proof of service]

# 15-1330-CV

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United States Court of Appeals  
*for the*  
Second Circuit

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RICHARD BRODSKY, New York State Assemblyman from the 92nd  
Assembly District in his Official and Individual Capacities,  
*Plaintiff-Appellant,*

PUBLIC HEALTH AND SUSTAINABLE ENERGY (PHASE),  
WESTCHESTER'S CITIZENS AWARENESS NETWORK (WESTCAN),  
SIERRA CLUB,  
*Plaintiffs,*

– v. –

UNITED STATES NUCLEAR REGULATORY COMMISSION  
*Defendant-Appellee*

ENERGY NUCLEAR OPERATIONS, INC.,  
*Intervenor.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**PLAINTIFF-APPELLANT RICHARD BRODSKY'S MEMORANDUM OF  
LAW IN SUPPORT OF MOTION FOR JUDICIAL NOTICE**

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Pursuant to Federal Rule of Evidence 201(b), Plaintiff-Appellant Richard Brodsky respectfully requests that this Court take judicial notice of the fact that numerous articles have been published since briefing was completed in this matter raising concerns about the threat of terrorism at nuclear power plants, as well as the fact that an NRC commissioner recently stated that it is appropriate to reevaluate security and terrorism-response measures at NRC-regulated facilities in light of new information about the threat of nuclear terrorism. *See* Declaration of Daniel J. Kramer in Support of Plaintiff-Appellant Richard Brodsky's Motion for Judicial Notice, filed herewith ("Kramer Decl.").

The articles address reports that the terrorists in the recent terrorist attack in Brussels, Belgium may have been planning to attack a nuclear power plant instead of an airport and subway station, and raise concerns about the vulnerability of nuclear power plants in all countries, from external attack as well as internal sabotage, in light of evolving information on terrorist strategies. *See id.* Exhs. A-F. The statement from NRC Commissioner Jeffrey Baran was made during recent Senate hearings on the NRC's budget, in response to a question from Senator Edward Markey of Massachusetts regarding whether the Commission would, "in light of the[ ] disturbing reports from Belgium [regarding the potential

terrorist attack at a nuclear facility] . . . take a new look at its design bases threat force on force mock terrorist exercises and other security regulations.”

*Id.* Exh. G at 20. Commissioner Baran responded that the “NRC staff is taking a look at this issue” and he believed that was “appropriate.” *Id.*

NRC Chairman Stephen Burns also responded that the events in Brussels “are something that is being looked at by” the NRC’s security personnel. *Id.*

A court may take judicial notice of facts for the first time on appeal. *See* FED. R. EVID. 201(d) (“The court may take judicial notice at any stage of the proceeding.”). “The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can accurately and readily be determined from sources whose accuracy cannot be reasonably questioned.”

FED. R. EVID. 201(b). “[I]t is proper to take judicial notice of the fact that press coverage, prior lawsuits, or regulatory filings contained certain information, without regard to the truth of their contents.” *Staehr v.*

*Hartford Fin. Servs. Grp.*, 547 F.3d 406, 425 (2d Cir. 2008) (upholding a district court decision to take judicial notice of media reports and collecting cases). Consistent with this holding, this Court has taken judicial notice of the fact of publication of articles, other public statements and activities of legislatures under Federal Rule of Evidence 201(b) on numerous occasions.

*See, e.g., Rivas v. Fischer*, 780 F.3d 529, 535 n. 4 (2d Cir. 2015) (taking judicial notice of newspaper articles); *Garber v. Legg Mason Inc.*, 347 F. App'x 665, 668-69 (2d Cir. 2009) (taking judicial notice of press articles and SEC filings); *United States v. Gelb*, 700 F.2d 875, 879 (2d Cir. 1983) (taking judicial notice of Congressional action).

This Court should similarly take judicial notice of the fact that the articles attached to the declaration accompanying this motion, which raise concerns about terrorism at nuclear power plants, have been published. *See* Kramer Decl. Exhs. A-F. The fact that these articles were published is generally known and can be easily confirmed: they were published by reputable news sources with international distribution and are accessible on the internet and news archival systems such as Lexis Nexis. *See id.*

This Court should also take judicial notice of the fact that NRC Commissioner Jeffrey Baran recently stated that it is “appropriate” for NRC staff to examine its security and terrorism-response measures in light of new information from Brussels regarding the threat of nuclear terrorism, and that both he and Chairman Burns stated that the NRC would be looking into the impact of this information on NRC procedures. *See id.* Exh. G at 20. The fact of the Senate’s hearing is generally known and easily confirmed, and the transcript of such hearings are made publicly available by the Political

Transcript Wire and are available on news archival systems such as Lexis Nexis. *See id.* Exh. G.

Further, these articles (raising concerns about terrorism at nuclear power plants) and the Congressional testimony (where NRC Commissioners acknowledged that it is appropriate to reevaluate security and terrorism-response procedures in light of the events in Belgium) are relevant to the disposition of this appeal. The NRC has taken the position that the possibility of terrorism at a nuclear power plant is too remote to warrant consideration. *See A-29; see also* Brief for Defendant-Appellant at 30. The articles, written by individuals and journalists in the international community unassociated with plaintiff-appellant, and the NRC testimony, are relevant to this Court's evaluation of the reasonableness of the NRC's position that terrorism is too attenuated from agency action to justify consideration under NEPA. The articles also confirm the importance of this Court's prior decision in this matter requiring the NRC to comply with NEPA's public participation requirement, as they underscore that issues of nuclear terrorism are the focus of broad public concern, both in the Hudson Valley and around the world.

Based upon the foregoing, this Court can and should take  
judicial notice of the articles and testimony attached to the Kramer  
Declaration.

Dated: New York, NY  
April 15, 2016

Respectfully submitted,

s/ Daniel J. Kramer

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Daniel J. Kramer  
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Richard Brodsky*

# 15-1330-CV

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United States Court of Appeals  
*for the*  
Second Circuit

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RICHARD BRODSKY, New York State Assemblyman from the 92nd  
Assembly District in his Official and Individual Capacities,

*Plaintiff-Appellant,*

PUBLIC HEALTH AND SUSTAINABLE ENERGY (PHASE),  
WESTCHESTER'S CITIZENS AWARENESS NETWORK (WESTCAN),  
SIERRA CLUB,

*Plaintiffs,*

– v. –

UNITED STATES NUCLEAR REGULATORY COMMISSION

*Defendant-Appellee*

ENTERGY NUCLEAR OPERATIONS, INC.,

*Intervenor.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

**DECLARATION OF DANIEL J. KRAMER IN SUPPORT OF PLAINTIFF-  
APPELLANT RICHARD BRODSKY'S MOTION FOR JUDICIAL NOTICE**

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DANIEL J. KRAMER declares:

1. I am a member of Paul, Weiss, Rifkind, Wharton & Garrison LLP and counsel for plaintiff-appellant Richard Brodsky. I make this declaration in support of the Motion for Judicial Notice.

2. Attached hereto as Exhibit A is a copy of the article, *Could there be a terrorist Fukushima?*, downloaded from the news archival website LexisNexis.com. The article was originally published in The New York Times on April 5, 2016.

3. Attached hereto as Exhibit B is a copy of the article, *Manage nuclear materials strictly to prevent use by terrorist groups*, downloaded from the news archival website LexisNexis.com. The article was originally published in The Japan News on April 4, 2016.

4. Attached hereto as Exhibit C is a copy of the article, *Nuclear security under spotlight*, downloaded from the news archival website LexisNexis.com. The article was originally published in The East Anglian Daily Times on April 2, 2016.

5. Attached hereto as Exhibit D is a copy of the article, *New beginning at the final nuclear security summit*, downloaded from the news archival website LexisNexis.com. The article was originally published in China Daily European Edition on April 1, 2016.

6. Attached hereto as Exhibit E is a copy of the article, *Post-Brussels attacks, nuclear terror becomes key focus; Obama may want to ensure strongest possible set of outcomes at the Nuclear Security Summit*, downloaded from the news archival website LexisNexis.com. The article was originally published in The Business Times Singapore on March 30, 2016.

6. Attached hereto as Exhibit F is a copy of the article, *Report explores security limits at Belgian nuclear power plants*, downloaded from the news archival website LexisNexis.com. The article was originally published in the French newspaper Liberation on March 25, 2016 and distributed by the BBC on March 30, 2016.

7. Attached hereto as Exhibit G is a copy of the transcript of Senator James M. Inhofe's hearing on the fiscal year 2017 budget for the Nuclear Regulatory Commission, downloaded from the news archival website LexisNexis.com. The hearing took place on April 6, 2015 and the transcript was made available by the Political Transcript Wire on April 7, 2016.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY  
April 15, 2016

s/ Daniel J. Kramer  
\_\_\_\_\_  
Daniel J. Kramer

# **Exhibit A**



1 of 1 DOCUMENT

Copyright 2016 International Herald Tribune  
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International New York Times

April 5, 2016 Tuesday

**SECTION:** EDIT; Pg. 6

**LENGTH:** 971 words

**HEADLINE:** Could there be a terrorist Fukushima?

**BYLINE:** GRAHAM ALLISON and WILLIAM H. TOBEY

**BODY:**

**ABSTRACT**

Nuclear facilities throughout the world are vulnerable to attack.

**FULL TEXT**

The attacks in Brussels last month were a stark reminder of the terrorists' resolve, and of our continued vulnerabilities, including in an area of paramount concern: nuclear security.

The attackers struck an airport and the subway, but some Belgian investigators believe they seemed to have fallen back on those targets because they felt the authorities closing in on them, and that their original plan may have been to strike a nuclear plant. A few months ago, during a raid in the apartment of a suspect linked to the November attacks in Paris, investigators found surveillance footage of a senior Belgian nuclear official. Belgian police are said to have connected two of the Brussels terrorists to that footage.

Security at Belgium's nuclear sites is notoriously poor. In August 2014, someone - as yet unidentified - drained 65,000 liters of lubricant from the turbine used to produce electricity at the country's Doel 4 nuclear power plant. No penetration was detected, leading investigators to suspect an inside job.

In 2012, two workers at the same plant reportedly left Belgium to fight in Syria, eventually joining the Islamic State. One of them is believed to have died in Syria; the other was convicted of terrorism-related crimes after returning to Belgium.

Yet still too little is being done to secure nuclear plants. That goes not only for Belgium: Nuclear facilities throughout the world remain vulnerable.

Could there be a terrorist Fukushima? International New York Times April 5, 2016 Tuesday

During the Nuclear Security Summit in Washington last week, more than 50 leaders announced that significant amounts of highly enriched uranium had been moved from various countries to secure storage sites and that a key nuclear-security treaty would be strengthened. But the improved version of that treaty is inadequate: It doesn't even call for arming the guards who look after bomb-grade nuclear material.

Discussions about nuclear terrorism also tend to focus on the risk of terrorists stealing weapons-grade material or making a dirty bomb. But they often overlook the danger of terrorists attacking a nuclear plant in order to set off a Chernobyl- or Fukushima-like disaster.

That risk is real, however, and has been known for a while. The master planner of the 9/11 attacks had considered crashing a jumbo jet into a nuclear facility near New York City. A Qaeda training manual lists nuclear plants as among the best targets for spreading fear in the United States.

Striking a nuclear plant or the cooling ponds in which nuclear waste is stored wouldn't set off a mushroom cloud or kill hundreds of thousands of people. But it would spew large amounts of radiation, spark a mass panic and render vast swaths of land uninhabitable. And it could cause thousands of early deaths from cancer.

More than one in three Americans lives within 50 miles of the 99 nuclear reactors operating in the United States today. There are more than 300 other nuclear reactors producing electricity in 30 other countries.

Nuclear plants have built-in safety mechanisms, typically multiple systems that are unlikely to fail simultaneously: If one of them malfunctions, there's always a backup, the theory goes. But redundancy is effective protection only against accidents, not against terrorists who set out to cause simultaneous system failures. For example, by targeting power and water supplies at the same time, attackers could cause a reactor to melt down or a cooling pond to ignite.

After the catastrophe at Fukushima, safety measures were bolstered at nuclear plants worldwide: More emergency equipment was put on standby, and measures for venting explosive hydrogen gas were improved. But conspicuous gaps remain in security, even in countries like Japan, India, Pakistan, Russia and the United States, which have major nuclear facilities and also have suffered serious acts of terrorism in the past. President Vladimir V. Putin didn't even attend last week's summit.

The first measure must be to combat complacency. Incredibly, it took the November attacks in Paris for Belgium to finally arm guards at its nuclear power plants. Even more incredibly, it took the Brussels attack last month for Belgian authorities to review the personnel records of employees at nuclear sites - and determine that about a dozen workers should have had their credentials revoked on security grounds.

At a minimum, armed guards should be required at all sites that hold weapons-grade material or enough low-enriched fuel to cause a major release of radioactivity. And all employees at nuclear plants should be thoroughly vetted before they are employed.

The United States can leverage its leadership in the international commerce of nuclear material and technology to improve security at nuclear plants in other countries. United States law already requires that nuclear material originating in that country be adequately protected when it is exported and while it is abroad.

Washington could also require a credible assessment of local terrorist threats, protective measures like arming guards at host facilities, regular exercises simulating armed attacks to test the plants' security systems, and independent oversight.

Current United States laws and regulations prohibit American intelligence and policy officials from sharing classified assessments of terrorists' intentions and capabilities with many governments. Even Japan, one of the world's largest producers of nuclear power and a close United States ally, cannot access this information. That must change.

Could there be a terrorist Fukushima? International New York Times April 5, 2016 Tuesday

And the Global Initiative to Combat Nuclear Terrorism, a voluntary network of 86 states and five international organizations, can help build capacity in this area by encouraging its members to share intelligence and best security practices.

Terrorists have their eyes on nuclear plants. So must we.

**NOTES:** is director of the Belfer Center for Science and International Affairs at Harvard Kennedy School and the author of "Nuclear Terrorism: The Ultimate Preventable Catastrophe." is a senior fellow at the center and co-author of the report "Preventing Nuclear Terrorism: Continuous Improvement or Dangerous Decline?"

**LOAD-DATE:** April 4, 2016

# **Exhibit B**



1 of 1 DOCUMENT

Copyright 2016 The Yomiuri Shimbun  
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The Japan News

April 4, 2016 Monday  
S Edition

**SECTION:** EDITORIAL; Pg. 4; No. 23519

**LENGTH:** 575 words

**HEADLINE:** EDITORIAL;  
Manage nuclear materials strictly to prevent use by terrorist groups

**BODY:**

An important mission of the international community today is to thoroughly guard nuclear power plants and manage nuclear and radioactive materials in order to prevent nuclear terrorism.

The Nuclear Security Summit was held in Washington, attended by leaders and other top officials from more than 50 countries. The leaders adopted a joint statement, with the promotion of sharing information on terrorism using nuclear materials as its central pillar.

They also decided on action plans to support such organizations as the International Atomic Energy Agency (IAEA) both financially and technically.

U.S. President Barack Obama, the chair of the summit, stressed, "We have made significant, meaningful progress in securing the world's nuclear materials so that it never falls into the hands of terrorists."

It is important for the countries concerned and international organizations, including the IAEA, to cooperate so that effective measures are taken, such as reinforcing training exercises for the transportation of nuclear materials. Nuclear facilities must also be protected from such extremist groups as the Islamic State of Iraq and the Levant (ISIL).

It is worrying that nuclear terrorism is becoming a real threat.

In connection with simultaneous terrorist attacks that occurred late last month in Brussels, the group responsible for the attacks has reportedly recorded video images of the home of a high-ranking official of a nuclear facility in Belgium. It is believed that they were spying on the official with an eye to kidnapping him so he could help the group obtain nuclear materials.

Preparations must be made against the possibility that ISIL -- which claimed responsibility for the Brussels attacks -- may plot nuclear terrorism.

EDITORIAL; Manage nuclear materials strictly to prevent use by terrorist groups The Japan News April 4, 2016  
Monday

'Dirty bombs' a threat

Radioactive materials can be detonated and dispersed in such places as shopping areas and can be easily used as "dirty bombs."

In many cases, such materials are kept at medical organizations and research institutes, where security is weaker than at military facilities.

Japan will host a Group of Seven summit in the Ise-Shima area in Mie Prefecture in May, and the Tokyo Olympics in 2020. It will be a matter of urgency to improve security measures before these events.

Regarding nuclear materials, Prime Minister Shinzo Abe said, "Japan has maintained a high level of transparency incomparable with any other countries and thoroughly implemented appropriate management."

Japan and the United States agreed during talks held on the occasion of the Nuclear Security Summit that the two countries will promote the sharing of classified information on the protection, transportation and other issues related to nuclear materials.

The two countries also agreed that Japan would have an additional amount of highly enriched uranium meant for research transferred to the United States.

Under the leadership of Japan and the United States, countries concerned should accelerate measures against nuclear terrorism.

The Nuclear Security Summit started in 2010 at the urging of Obama who aims for a "world without nuclear weapons." As his presidency will end next year, the latest summit -- the fourth of its kind -- was the last one.

Over the past six years, a total of about 3.8 tons of highly enriched uranium and plutonium have been removed from more than 50 facilities in 30 countries, including Japan.

Such efforts by the international community must continue.

(From The Yomiuri Shimbun, April 3, 2016)

**LOAD-DATE:** April 14, 2016

# **Exhibit C**



1 of 1 DOCUMENT

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**EADT24**  
East Anglian Daily Times

April 2, 2016 Saturday

**SECTION:** ROP

**LENGTH:** 378 words

**HEADLINE:** Nuclear security under spotlight

**BYLINE:** PR Page Manager 14

**BODY:**

Prime Minister David Cameron has emphasised the importance of state-of-the-art security at nuclear plants like Sizewell B with a warning that terrorists would "like to kill as many people as they possibly could".

As world leaders gathered to discuss security of nuclear facilities amid fears Islamic State jihadists could attempt to create a dirty bomb, he said terrorists will use "whatever materials they can get their hands on".

At the Nuclear Security Summit, which concluded in Washington yesterday with a "scenario-based session" focusing on the "threat from nuclear terrorism", Britain offered its expertise to other countries to safeguard their own civil nuclear installations.

Security at Sizewell B - where EDF Energy say its highest priority is the safety and security of the public, its staff, buildings and installations - was tested only a few months ago with a mock terrorist attack that was described as "credible, challenging and well-planned".

This week the complex completed work on a new £200million facility to store spent radioactive waste - the first in the UK.

Mr Cameron said: "We know that the terrorists we face today would like to kill as many people as they possibly could, using whatever materials they can get their hands on.

Nuclear security under spotlight East Anglian Daily Times April 2, 2016 Saturday

"So obviously the security of nuclear materials, for those countries that have nuclear programmes, is incredibly important and that's why this conference like previous conferences will make sure that we have proper security for those materials, not just in Britain - we are quite a global leader in this - but also all over the world.

"So it's a very important subject, there will be very important actions announced at this conference, and it's about making sure our world is safe and secure and we are not at risk from terrorists coming together with nuclear materials."

The attacks in Brussels have raised fresh concerns about the prospect of nuclear terrorism.

Belgian media reported two of the suicide bombers in the attacks had video footage of the home of a senior official at a Flanders nuclear waste facility.

EDF said: "In order to maintain the highest standards of security, we do not discuss operational details, but like all civil nuclear facilities in the UK, we have detailed security arrangements in place."

**LOAD-DATE:** April 2, 2016

# **Exhibit D**



1 of 1 DOCUMENT

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China Daily European Edition

April 1, 2016 Friday

**SECTION:** FEATURED CONTRIBUTORS

**LENGTH:** 784 words

**HEADLINE:** New beginning at the final nuclear security summit

**BYLINE:** Tomas Casas

**BODY:**

On August 2014 a turbine at the Doel 4 nuclear power plant was "intentionally manipulated", a sabotage that contributed to half of Belgium's nuclear capacity coming to a standstill. To this day the case is unresolved even though a jihadi was found working there. The fourth and final Nuclear Energy Summit in Washington DC aims to mitigate a low likelihood, highly catastrophic black swan event.

The threat equation that will be addressed is no secret: Threat = Terrorist motivation times terrorist capabilities minus mitigation efforts. Few will doubt that the two first variables of the equation are in ascendance. For instance, in terms of motivation, terrorists of yore saw the fallout of nuclear terror as irreconcilable with their political agenda. In contrast, there are terrorist groups today that openly wield unconstrained and apocalyptic narratives.

In terms of capabilities the industry is growing post-Fukushima, with new applications being developed towards a clean energy future. Exciting headlines talk about Bill Gates' Terra Power, Jeff Bezos' General Fusion or Rosatom's nuclear spacecraft engine enabling a return trip to Mars. The nuclear innovation boom will in parallel contribute to nuclear knowledge dissemination and hence also increase the risk of know-how ending in the wrong hands.

Mitigation becomes thus more critical than ever; for all their brutality, the recent terror attacks in Brussels and Paris would rank as minor incidents compared to a dirty bomb's radiological release. A decade ago RAND's Center for Terrorism Risk Management Policy conducted strategic decision-making games for a nuclear "ground-burst" terror attack on the Port of Long Beach. Beyond the terrifying loss of life in America, the economic consequences would hurt nearly every human being on the planet. While the early impact of a dirty nuclear detonation was estimated at \$ 1 trillion - 10 to 20 times 9/11 -these costs would only be a prelude as the global finance, insurance and trade systems

New beginning at the final nuclear security summit China Daily European Edition April 1, 2016 Friday

melt away.

The United States usually leads assertive, multilateral, institution-building initiatives, and in this particular case credit goes to the Obama Administration. The summits have ushered a framework and culture of nuclear security and tackle complacency, a far cry from the void existing at the time of 9/11. And yet despite important achievements, at the moment we have no agreement on nuclear security standards, no shared global databases on incidents, not even report formats - nuclear security excellence is still elusive. President Xi Jinping meeting President Barrack Obama in Washington signals that these challenges are at the top of the global agenda.

The PRC is, after all, betting big on nuclear. China is the best place to pursue next-generation nuclear power. His investee TerraPower will build a reactor prototype with the China National Nuclear Corporation. China aims to become both exporter and global leader in clean-energy manufacturing. In the next four years alone two dozen new nuclear reactors will come online. At the same time the county is already leading in terms of nuclear security making great strides in areas ranging from new legislation to the physical protection, control and accounting of nuclear material.

Russia was absent from the summit despite its cutting-edge nuclear know-how and arsenal. Sanctions broke off two decades of productive US-Russia cooperation. China diplomacy is seen a positive force, reinforcing the narrative that security is best achieved when all big powers are invested in each other.

While direct threats from state actors are not the summit's emphasis, North Korea will certainly be the elephant in the room. Donald Trump's statement this week that he is open to Japan and South Korea having nuclear weapons brings the issue further to the fore. When the two presidents meet, further coordination in on the issue will likely be on the table.

The final summit will usher a new beginning with action plans to be developed by specialized entities such as the International Atomic Energy Agency, INTERPOL and the Global Initiative to Combat Nuclear Terrorism. How smooth will the transition be away from the limelight format? The new era will certainly see a new kind of management, and as President Obama leaves office a torchbearer for global nuclear security safety could well be China. China's bridge-building leadership approach complements America's style and shall be key to keep black swans at bay.

*Tomas Casas is a faculty member at the University of St. Gallen and its Institute for International Management (HSG-FIM).*

*The opinions expressed here are those of the writer and don't represent views of China Daily website.*

**LOAD-DATE:** April 1, 2016

# **Exhibit E**



1 of 1 DOCUMENT

Copyright 2016 Singapore Press Holdings Limited  
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The Business Times Singapore

March 31, 2016 Thursday

**SECTION:** OPINION; Editorial

**LENGTH:** 1066 words

**HEADLINE:** Post-Brussels attacks, nuclear terror becomes key focus;  
Obama may want to ensure strongest possible set of outcomes at the Nuclear Security Summit.

**BYLINE:** Andrew Hammond , Post-Brussels attacks, nuclear terror becomes key focus

**BODY:**

WASHINGTON DC plays host on Thursday and Friday to the fourth and potentially final Nuclear Security Summit (NSS), convened by US President Barack Obama. Post-the tragic Brussels attacks last week, the event has assumed heightened importance with media reports that some of the self-ascribed Islamic State in Syria and Iraq (ISIS) bombers had initially planned to attack a nuclear power plant in Belgium.

While the precise details of this alleged plot are unclear, there is unquestionably growing concern about the threat of nuclear terrorism. After the Brussels atrocities, UK Defence Secretary Michael Fallon pointed to a "new and emerging threat" of terrorists acquiring nuclear weaponry, while former US defence secretary Robert Gates has noted that "every senior leader, when you're asked what keeps you awake at night, it's the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear".

More than 50 countries will convene at the NSS to focus on "minimising the use of Highly-Enriched Uranium (HEU), securing vulnerable materials, countering nuclear smuggling and deterring, detecting, and disrupting attempts at nuclear terrorism". This wide-ranging agenda first came prominently on the international radar screen following the collapse of the Soviet Union in the early 1990s, when concerns were raised about safeguarding the former communist state's extensive nuclear weaponry.

More recently, however, the urgency of nuclear terrorism was raised by the September 2001 attacks. This was interpreted in some quarters as a "wake-up call" about the possibility that a group such as Al-Qaeda could detonate a small nuclear weapon or a radiological dispersal device (a so-called "dirty bomb").

The NSS process kicked off soon after Mr Obama assumed office when he asserted that nuclear terrorism represents "the most immediate and extreme threat to global security". In the same speech, he gave an ambitious deadline to "secure all vulnerable nuclear material around the world within four years".

Post-Brussels attacks, nuclear terror becomes key focus; Obama may want to ensure strongest possible set of outcomes at the Nuclear Security Summit. The Business Times Singapore March 31, 2016 Thursda

While this deadline was unrealistic, there has been progress in reducing the number of countries with access to HEU and plutonium. For instance, enough HEU for some 3,000 nuclear weapons has been "down-blended" in Russia and the United States, around a dozen countries have returned their previous stockpile of HEU back to the country of origin (mostly to the US and Russia); a significant number of former nuclear facilities across the world are now both HEU and plutonium-free; and around 20 countries have launched a counter-nuclear smuggling initiative.

However, as the Washington summit will underline, this effort remains a work in progress. As at late-2013, for instance, some 30 states from Europe to Asia - including Uzbekistan, Kazakhstan, Belarus and Pakistan - had at least 1kg of HEU in civilian stocks. Moreover, since 1993, there have been more than 2,700 confirmed incidents of illicit trafficking, unauthorised possession or loss of nuclear and radioactive material reported to the International Atomic Energy Agency (IAEA).

While the conventional wisdom is that the probability of a major nuclear terrorism event is very low, consequences would be so dramatic that it remains a significant concern. According to the Nuclear Security Governance Experts Group, detonation of even a small handful-sized amount of plutonium could kill or wound hundreds of thousands of people in a densely populated area.

And, the ensuing chaos would probably spiral outwards, potentially overwhelming medical facilities and causing major domestic and international travel problems. It could also trigger a significant macroeconomic shock by undermining consumer confidence.

Given the hurdles to terrorist networks obtaining weapons-grade material, perhaps the bigger danger is a dirty bomb attack. Here, the complexity of the operation is unfortunately much reduced as conventional explosives would be used to spread radiation from a radioactive source. Only in December 2014, Mexican law-enforcement authorities discovered a vehicle believed to have been stolen by thieves which contained radioactive medical materials that could have been used to power a dirty bomb.

A further potential scenario is a terror attack on a nuclear plant, of which there are currently around 440 such facilities in 31 countries. Post the Brussels atrocities, some media outlets claim such a plot had initially been planned by ISIS terrorists in Belgium. While details of this remain unconfirmed, it is further reported in some media that earlier this month some 140 soldiers were sent to enhance security at the country's nuclear sites, and after the attacks that these facilities were closed off and non-essential staff evacuated.

With this potentially final NSS coinciding with Mr Obama's last full year in the White House, it is likely that he will want to ensure the strongest possible set of outcomes. This would build upon the achievements in the 2010, 2012 and 2014 meetings in Washington, Seoul and The Hague respectively, which have reduced the amount of dangerous nuclear material across the world; improved security of much of this nuclear material; and generally strengthened international cooperation on this agenda, although the latter has been stymied since the post-Ukraine conflict chill in relations between the US and Russia, and the latter country will not attend the Washington summit.

Mr Obama sees enhancing global nuclear security as a key part of his presidential legacy. As well as initiating the NSS, he secured the New Strategic Arms Reduction Treaty, under which Moscow and Washington committed to reducing their deployed nuclear arsenal, and the US also reached a landmark nuclear deal with Iran last year.

Beyond the summit, long-term success of the NSS agenda will be determined by several factors, including resources and funding, and what happens to the process after Mr Obama's presidency given that it will need continued prominence to maximise prospects for success. Especially if the NSS is not renewed beyond 2016, it will therefore be important to anchor ongoing initiatives into other bodies, including the IAEA, so that the momentum and successes of the process are institutionalised as much as possible for the future.

The writer is an associate at LSE IDEAS (the Centre for International Affairs, Diplomacy and Strategy) at the London School of Economics.

Post-Brussels attacks, nuclear terror becomes key focus; Obama may want to ensure strongest possible set of outcomes at the Nuclear Security Summit. The Business Times Singapore March 31, 2016 Thursda

**GRAPHIC:** After the Brussels atrocities, media reports said some of the ISIS bombers had initially planned to attack a nuclear power plant in Belgium.

**LOAD-DATE:** March 30, 2016

# **Exhibit F**



1 of 1 DOCUMENT

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March 30, 2016 Wednesday

**LENGTH:** 2761 words

**HEADLINE:** Report explores security limits at Belgian nuclear power plants

**BODY:**

Text of report by French newspaper Liberation on 25 March

[Report by Isabelle Hanne: "Belgium: Threat To Nuclear Power Plants"]

Has Belgium narrowly avoided a nuclear power plant, terrorism combination? In any event, a body of evidence - names that appear in connection with the Paris terrorist attacks, the shooting in Forest and the Brussels attacks, as well as a strange video that makes the link - points in that direction. In the hours following Tuesday's [22 March] terrorist attacks, with the federal threat level passing to level four, "personnel not essential to the operation of the power plant were asked to leave the Tihange (Liberation editor's note: in Wallonia) and Doel (Liberation editor's note on the Flemish side) sites," the country's two power stations, they explain at Engie, the French company whose Electrabel subsidiary runs these sites. And according to RTBF, 11 persons have just lost their authorization to access the Tihange nuclear power plant: seven after the Forest shoot-out on 16 March, and four persons following Tuesday's terrorist attacks. In fact, according to a source inside the power station contacted by Liberation, these authorization withdrawals concern fewer than 11 persons and only subcontractors. Belgium's nuclear power watchdog, the Federal Nuclear Power Control Agency [AFCN], confirms the withdrawal of four authorizations last week, "without any connection to the terrorist attacks" on Tuesday, stipulates its spokesman, Sebastien Berg.

The concern is not new. Belgian investigators had been very careful to refrain from publicizing this: following the Paris terrorist attacks, a video that lasts at least 10 hours was found during a search within the framework of the Belgian aspect of the investigation that was made at the home of Mohamed Bakkali, 28. He was arrested in Brussels shortly after the 13 November attacks and considered as being one of the persons in charge of logistics for the Molenbeek cell. On the images, there was a static shot of an entrance door to a home. The Belgian press revealed the existence of this video, and the federal prosecutor's office confirmed it, at the end of February. Investigators managed to locate the home and to identify the person being targeted thanks to a bus that passed by there. The camera, stashed away under a bush, recorded the comings and goings of a top official at the Mol Nuclear Research Centre, which is equipped with an experimental reactor and a small amount of uranium. On the video surveillance images, we see two men who came to

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pick up the camera. The Belgian daily, *la Dernière heure*, suggested on Thursday [24 March] that they were allegedly the El-Bakraoui brothers, Ibrahim and Khalid, two of the suicide bombers of Tuesday's attacks. The prosecutor's office is not confirming for the time being and Engie is refusing to comment. However, there are other interconnections. In his "testament," revealed by the federal prosecutor's office on Wednesday, one of the brothers, Khalid El Bakraoui, refers to Mohamed Bakkali. Well, it was precisely at the latter's home that the video of the Mol official was found.

Prior to this week's terrorist attacks, and in spite of the video's existence, people at the Belgian Ministry of the Interior were firm: "For the moment, there is no specific threat to Belgian nuclear sites," spokeswoman Anne-Laure Mouligneaux claimed in early March, explaining that these sites have been "under reinforced vigilance" since the Paris terrorist attacks.

The ministry relies on the Threat Analysis Coordination Board [OCAM], responsible for assessing risks in matters of terrorism. Regarding the video on the top official from Mol, "OCAM deemed that the threat concerned the individual and not on the installations." That is it.

#### "Four-Eye Policy"

Yet, there have already been stories associating nuclear power plants and terrorism in Belgium. An engineer at Doel-4, one of the power plant's reactors located near Antwerp, was fired for radicalization in 2013. He refused to shake his superior's hand. "He was no longer complying with Electrabel's values," they say at the electricity company.

The same Doel-4 reactor had one of its turbines sabotaged one year later: in August 2014. This has still not been cleared up to this day. The investigation was quickly passed to the hands of the federal prosecutor's office: serious consideration is given to a terrorist lead. "In the Doel-4 hall, someone deliberately emptied 65,000 litres of oil that is used to lubricate the turbine (normally, the oil is emptied in case of fire) and then the valve was pushed up again to make believe that everything was normal," explains Eloi Glorieux, Greenpeace-Belgium's nuclear expert. "The surveillance cameras had been turned the other way: proof that it was not an impulsive act, or the work of a single person." The removal of the oil caused major damage to the Doel turbine.

This power station, built on a polder on the banks of the Escaut River, is located in the middle of the country's economic hub. Its cooling towers face the containers and petrochemical plants in the port of Antwerp. The nuclear power station is located in Europe's most densely populated region, with its 1.5 million inhabitants within a radius of 30 kilometres. "This sabotage could have caused a real catastrophe," comments Jean-Marc Nollet, a deputy and leader of the ecology group in parliament. "We were lucky in a way...."

More than a year and a half later and there has been no arrest made within the framework of this investigation. All the same, the sabotage of Doel-4 did push Electrabel and the Belgian nuclear watchdog, the AFCN, to impose two new measures inside the power stations. The "four-eye policy" requires workers to move about by twos in the power station's sensitive areas and it is forbidden to keep one's cell phone in the power station's technical areas; nuclear or non-nuclear. At the end of January 2016, the newspaper *l'Echo* revealed that the Doel engineer who had been fired in 2013 was Azzedine Kbir Bounekoub's brother-in-law, a jihadi member of the Sharia4Belgium organization, which is well established in Antwerp. He was born in 1992 and left Belgium in 2012 to join the ranks of Islamic State in Syria under the name of Abu Abdullah. He is notably known for having called, on several occasions, for terrorist attacks on Belgian soil.

Belgian power station security is discussed at the local level during oversight meetings that bring together the mayor, the police, the operator.... At the federal level, it is the National Security Authority [ANS] - whose mission is to protect all classified information - that is responsible for issuing authorizations to employees and subcontracting companies at sensitive sites (airports, NATO, as well as certain parts of power stations considered as "classified areas"...). "This authorization is either granted or not after an in-depth security investigation that takes several months and is carried out by the collegial authority (Liberation editor's note: the country's intelligence services, judiciary police,

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federal police, the AFCN, etc.)," explains Claudia de Maesschalck, the president of the ANS. The authority then makes checks every five years or earlier "if there is new evidence," its president reports. According to her, approximately 1 per cent of the requests are turned down. One unacceptable criterion: "When there is an ongoing judicial investigation against the person," states Claudia de Maesschalck. "We do not carry out a criminal procedure but a risk assessment. It is not an exact science; we do not use an algorithm."

And when there is evidence of radicalization? "Radicalization is part of our criteria as is every element of common law. A person is free to have the religion he wants. It is only when there is evidence of uncompromising proselytism or extremism that we say no. We never reject anyone for religious reasons, but rather because the person's integrity is no longer guaranteed."

#### Private Security Company

Since the Paris terrorist attacks and the dismantling of the Verviers cell in Belgium (suspected of preparing attacks against police forces), the AFCN claims to have "reinforced security measures in and around nuclear sites." This represents four areas in Belgium: the two power stations at Doel and Tihange, the Mol research centre and the Fleurus Isotope Institute, a laboratory that produces radio-isotopes for medical use. "There are no known risks at Belgian nuclear sites," Sebastien Berg, the AFCN spokesman, insisted at the end of February. "However, we are taking preventive action and what we have put in place suffices for preventing malicious acts."

A terrorist attack on a nuclear power station, Jean-Marc Pirotton, the Gazelco union shop steward at the Tihange power station, does not believe it. "It is not one person, with explosives, who is going to succeed in blowing up the power station!" he exclaims while sitting at a table in a brasserie in Huy, the city where Tihange is located. "It is much more complicated than that. There are so many levels of security and control that it would require such skill, such knowledge of the facility that this seems highly unlikely to me. Of course, there are always ways to do better...." The union representative talks about his recent visit to a German power station, with "its ditches dug all around, its anti-tank girders, its artificial smoke systems to hide the site, its anti-aircraft cannon bases.... We do not have all that and Belgian power stations were not designed to resist the crash of a big airplane, but airplanes of that era."

This is not the least distinguishing feature of Belgian nuclear power plants. In those areas where France has deployed gendarmerie platoons that are specialized in these power plants, Belgium entrusts the security of its nuclear sites to G4S, a private security company. The guards do not have the right to arrest and have to be content with contacting the local police in case of an incident. "They lack legal means. They are not armed. They have the same prerogatives as any citizen," remarks Jean-Marie Dradin. This officer, who is second in command in the Huy police force, completed internships (at his request) at Tihange and at the French power plant in Chooz (Ardennes) in order to "perfect (his) knowledge of how security operates." And improve communications between the security company and the local police, which is on the front line to intervene at the power plant.

He was thus able to assess the two systems: "The power plant's security is not in danger because of the absence of soldiers or policemen! However, on the strength of the French experience, I can say that it is a plus." Moreover, Belgian power plants had been kept under surveillance by the military up until the mid-1990s."

Last year, the former socialist mayor of Huy, Alexis Housiaux, sounded the alarm after the Verviers cell was dismantled by asking that the army or the federal police once again guard these sites. "I find it abnormal that the army patrols in town, protects shopping malls but not the power plants," remarks the man who was in office until January. "However, the Ministry of the Interior did not go along with me, considering that, in Belgium, the army does not have a police mission on Belgian soil. If there really are terrorists who arrive with warlike intentions, they will get inside the power plant. They will not go into the nuclear power sections but they will penetrate inside the facility."

Moreover, Greenpeace has shown on several occasions that it was possible to break into the site and remain on top of a reactor dome "using non-violent means," insists Eloi Glorieux. At the end of 2015, the Belgian government finally

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took action on creating the Surveillance and Protection Directorate, a federal police corps that will be responsible for protecting courts of law and nuclear sites, among other things, up to threat level 3. The army takes over beyond that level. "We are at the working group stage for now, this will take a few more months," explains the Ministry of the Interior spokesman. In the meantime, 140 soldiers have been deployed at Belgian nuclear sites since last week; a measure that was thus put in place prior to the terrorist attacks.

Most of all however, the threat may come from the interior. The Tihange and Doel power plants each employ 1,000 people and approximately 500 subcontractors: guards, stockroom personnel, technicians... in administrative areas, as well as in sensitive areas. "Electrabel employees are analysed in-depth, whereas subcontractors, in some cases, only undergo rapid "screening," states Jean-Marc Piroton, the Gazelco shop steward at the Tihange power plant. "In this case, it is the power plant security officer who either gives his authorization or not. It is as if in an airplane, there was in-depth control of the pilot, co-pilots, members of the crew and cabin but just about any passenger was allowed to enter! We had a subcontracting agent at Tihange who lost his authorization two months ago because of radicalization...."

Claudia de Maeschalck, who does "not comment on individual cases," maintains that "the security measures are the same for employees and subcontractors," but she puts forward the "economic logic: an authorization involves six to nine months of waiting.... In the end however, everything must have the ANS's endorsement."

#### The Weaknesses of a Process

Once a year, during technical overhauls, a number of external specialists can come to work for only a few days at the power plant. "This can be hundreds of additional people. We do not have time to do a real 'screening' [English in text], which can take one year," says a technician at Doel. "The rule imposes that they never be alone in the power plant but there are too many of them, it is impossible to monitor them." AFCN spokesman Sebastien Berg defends these measures: "The procedures are not less reliable, they are simply quicker. Some persons must be able to intervene within a period of a few days because they are specialized on one type of equipment."

Claudia de Maeschalck admits it: "We can never be immune to risk. We can manage it; reduce it while searching for the right balance between individual rights and state security. It is a very delicate, a very judicious process" that can have its weak points, as illustrated in the case of Ilyass Boughalab. This young man, who hailed from the Borgerhout neighbourhood of Antwerp, was born in 1988. He worked as a technician for Vincotte, a subcontractor, at Doel for three years and supplied conformity certificates to the power plant. He therefore had access to the nuclear part of the site even though he was known to the police services for his violent behaviour. He left for Syria in November 2012 and he die in March 2014.

#### Reinforced Controls on the French Side

In France, the country with the most nuclear energy in the world, "the terrorist threat has been taken into account," proclaims Areva and EDF [French Electricity Company]. The protection of sites against this risk "has been integrated since the power plants got under way," notes a spokesman for EDF, which runs France's 19 power plants. After 11 September and the 2015 terrorist attacks in Paris, "the authorities reinforced existing measures," he adds. The cornerstone of the system is the "round-the-clock" presence of the 800 men from the Gendarmerie's Specialized Protection Platoon [PSPG], who are trained by the Intervention Group of the National Gendarmerie [GIGN] and divided up among the 19 power plants. "However, with the three eight-hour shifts, vacations, etc. there are only four or five gendarmes permanently at a site..." tempers Yannick Rousselet of Greenpeace. In addition to this, there are video surveillance, gates, guards, and "locking down" the site in case of an intrusion.... In the face of internal threats, every year "100,000 administrative inquiries" are made on EDF employees and external participants resulting in the sidelining of approximately 700 people who are denied access to the establishments. Since the Brussels terror attacks, there has been "no change regarding measures that have been in place since January 2015 within the framework of the Vigipirate plan: we remain on reinforced vigilance. The fact remains that "if one wants to go inside a power plant, one goes in,"

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maintains Yannick Rousselet, for whom the worst threat comes from the transportation of fuel and nuclear waste.

Source: Liberation, Paris, in French 25 Mar 16 pp 2-4

**LOAD-DATE:** March 30, 2016

# **Exhibit G**



1 of 1 DOCUMENT

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April 7, 2016 Thursday

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FULL TEXT

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS HOLDS A HEARING ON THE F.Y. 2017 BUDGET FOR THE NUCLEAR REGULATORY COMMISSION

APRIL 6, 2016

<b>SPEAKERS:</b>	SEN. JAMES M. INHOFE, R-OKLA.	<b>CHAIRMAN</b>
SEN. DAVID VITTER, R-LA.	SEN. JOHN BARRASSO, R-WYO.	SEN. SHELLEY MOORE
CAPITO, R-W.VA.	SEN. MICHAEL D. CRAPO, R-IDAHO	SEN. JOHN BOOZMAN, R-ARK.
SEN. JEFF SESSIONS, R-ALA.	SEN. ROGER WICKER, R-MISS.	SEN. DEB FISCHER, R-NEB.
SEN. MIKE ROUNDS, R-S.D.	SEN. DAN SULLIVAN, R-ALASKA	

SEN. BARBARA BOXER, D-CALIF.	<b>RANKING MEMBER</b>	SEN. THOMAS	
R. CARPER, D-DEL.	SEN. BENJAMIN L. CARDIN, D-MD.	SEN. SHELDON WHITEHOUSE,	
D-R.I.	SEN. JEFF MERKLEY, D-ORE.	SEN. KIRSTEN GILLIBRAND, D-N.Y.	SEN.
CORY BOOKER, D-N.J.	SEN. EDWARD J. MARKEY, D-MASS.		

SEN. BERNARD SANDERS, I-VT.

**WITNESSES:** STEPHEN BURNS, CHAIRMAN, NUCLEAR REGULATORY COMMISSION

KRISTIN SVINICKI, COMMISSIONER, NUCLEAR REGULATORY

SEN. JAMES M. INHOFE HOLDS A HEARING ON THE F.Y. 2017 BUDGET FOR THE NUCLEAR  
REGULATORY COMMISSION Political Transcript Wire April 7, 2016 Thursday

COMMISSION

WILLIAM OSTENDORFF, COMMISSIONER, NUCLEAR REGULATORY  
COMMISSION

JEFFREY BARAN, COMMISSIONER, NUCLEAR REGULATORY COMMISSION

[\*] (JOINED IN PROGRESS)

INHOFE: ...we're waiting for Barbara but we'll wait more than -- one more minute and I will do my opening statement because she called me -- has heard that before anyway, so ...

(AUDIO GAP)

INHOFE: ... newer members of the Senate on the panel here that's primarily used, Senator Rounds, that what we're going through today is very similar to what we went through back in 1998. In 1998, I was the -- the Republicans were a majority. I was the chairman of the Clean Air Committee -- Subcommittee that has jurisdiction over the NRC.

At that time, we'd gone four years without an oversight meeting. You can't go four years without an oversight meeting in a bureaucracy. It doesn't work. And so we were able to really accomplish things and I think things have gotten a little bit too relaxed in the years. So I'll be charging you folks to do a similar thing as we did back in 1998 and get on top of everything again and that will be the thrust of my opening statement, which I'll make as soon as Barbara gets here.

So this is very significant that we -- at this time because of what has happened in the nuclear industry that we get back on top of this stuff. I'm going to go ahead. Our meeting will come to order, and Senator Carper, you will take Barbara's place here for a minute.

The -- I'd like to begin by welcoming all four commissioners here. I appreciate it and I'll say particular to you, Commissioner Ostendorff, I understand you're going to be going back to your previous duties, which is less strenuous I would assume, in teaching at the Navy Academy. You've had a great background and history, and of course, great contributions to this committee. We will miss you. We'll all miss you sitting out there.

And by the way, right now there are two -- there are two vacancies. Mrs. Jesse Robertson is one of them that's been nominated. These are partisan nominations, so that would be a Democrat slot. And what we've always done in the past we will attempt to do again now is to pair with a Republican and we're hoping we'll be able to do that. We are in contact right now with the White House to try to make -- to accommodate that because I would hate to have to try to operate with just three commissioners. And Barbara is here.

BOXER: Good morning, Jim.

INHOFE: Good morning, Barbara. So anyway, that's what our intention will be to -- and we're going to ask also as I did individually with this. Since we have a vote at 11 that means we can stay here till 11:15. I think if everyone stays within the time limit, it'll work. And that's what we will be asking our members to do.

The NRC requested \$982 million in budget authority for fiscal year 2017, down slightly from fiscal year 2016. The NRC's safety mission is a critical one, but it accomplished its mission with significantly fewer resources in the past.

Following 9/11, the NRC's budget grew to address the rising security concerns. Around 2006, it started growing to address growth in nuclear energy. Unfortunately, that growth hasn't seen a robust -- as robust as we thought. So -- in fact, we've seen five reactors close in recent years and at least three more will close by 2019. The NRC's budget remains significantly higher.

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So what I am saying is we raised the budget anticipating a greater activity out there, and that didn't happen. But as very typical of -- of a government agency, it maintained that same size. And so we have a chart -- where's that chart? Yes, open the chart. What I'm saying is right here if you look at the -- at the increases and then you look at the workload, the workload is going down, money is going up, and that's what I -- this is not the first time in the government that that's happened. So, I am concerned about this, the -- as a result of Project Aim, the NRC staff has proposed to the commission an additional \$31 million in cost savings for next year. That's good. That's not enough. Now, back then, it -- I talked, Barbara, about what happened in 1998. At that time, we were going through and we had actually gone four years without any oversight and that's something that doesn't work. So the -- at that time, the stakeholders identified several areas for improvement in the commission meeting. And before this committee -- and I was there at the time and I remember it well -- those recommendations -- there were five of them, the timeliness, the fiscally responsible review of the licensing actions, stricter application of the backfire -- back fit rule, the systematic application of a clear standard for -- of safety significance in regulatory decision-making rather than vague terms such as enhanced defense in depth, more discipline used in request -- a request for additional information or RAI's, more discipline -- and the need for an objective quantitative assessment of safety performance.

You may have noticed that the -- this committee has either written or requested the commission on all of these subjects in the last year. And it appears that many of them, the inefficiencies that plagued the NRC in the 1990s have returned, and that's what we've been talking about.

Back then, in response to the congressional oversight, Chairman Shirley Ann Jackson held a meeting with stakeholders to delve into their concerns. She followed with a memo tasking agency staff with the developing plan to address those concerns and others raised by this committee. The executive director, Joe Callan (ph), seized her challenge and his return progress report -- reports became legendary, examples of the agency's self-improvement capability and responsiveness. All of this transpired under three months.

In 1998, in my first NRC hearing as subcommittee chairman, an industry witness testified, and this is a quote, "Just as the industry has made a significant transition in the way it operates in a competitive market, the NRC must replace an outdated, ineffective regulatory framework with one that is objective, safety focused and responsive, and it did." The nuclear industry once again faced the challenges in the marketplace and once again the need for the NRC to be an objective, safety focused and responsive regulator is imperative.

And Chairman Burns, I urge you to take a page out of Chairman Jackson's playbook and tackle these challenges. Senator Boxer?

BOXER: Thank you. I'd like to welcome the commissioners here. There are many important topics facing us, including implementing post-Fukushima safety improvements, ongoing efforts to cut costs, and the commission's work on decommissioning reactors such as the San Onofre Nuclear Generating Station in my home state.

Today's hearings -- today's hearing comes more five years after the Fukushima tragedy. The people in Japan continue to suffer from the consequences of this disaster. It may be pleasant not to look at it, but we better look at it. The study released in October 2015 published in the Journal Epidemiology found that children living near the site of the Fukushima meltdown have been diagnosed with thyroid cancer at a rate 20 to 50 times that of children elsewhere. Also in October, Japan's health ministry announced the first confirmed case of cancer in a Fukushima recovery worker. These reports do not inspire confidence.

Just last month, a Gallup poll showed that for the first time, a majority of US adults, 54 percent, opposed nuclear power. I have been saying over and over again since Fukushima in order to earn the confidence of the American public and win them over the nuclear power industry must do everything it can to avoid similar disasters, and so must you.

That is why it is so critical to address post-Fukushima safety recommendations that were identified by the

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Fukushima Near-Term Task Force in 2011. While I recognize that progress has been made on some of the recommendations, I remain concerned that not one -- not one of the 12 task force recommendations has been fully implemented and many have been closed without any action at all. We have a -- we'll share with you this chart.

Sadly, it's the same darn thing I held up months ago. What are you folks doing over there? You have majority of the people against nuclear power for the first time in a long time. People believe nuclear should be part of the mix if it is safe. So you have reports out of Japan. You had your task force tell you what to do. I'll tell you, if the Congress did there, we'd all be voted out if we were expected to take certain steps. I don't understand it, so I'm going to ask you about it.

Now, in addition to this, the non-action over here, the commission recently approved an NRC staff proposal to close out numerous lower priority recommendations without taking any action to implement safety improvements. This approach ignores the serious safety concerns raised in the wake of Fukushima. I am concerned that the efforts to reduce your budget would undermine safety if they are not implemented carefully, those cuts.

The staff recently provided the commission with a paper outlining 151 recommendations for cutting costs. Unfortunately, some of these recommendations would reduce or eliminate important safety initiatives, including new limits on inspections at nuclear plants. If we want to convince the American people again that they're wrong on nuclear power, that it can be done safely, this is the worst way to go about it I've heard. I don't get it. I really don't in all sincerity.

The commission has to live up to its mission, quote, "to ensure the safe use of radioactive materials for beneficial civilian purposes while protecting people and the environment." One mess-up in any one of these power plants and it's over for the nuclear power industry. I hope everyone understands that with this news coming out of Fukushima.

Finally, I want to highlight challenges at the two nuclear power plants in my home state. My people there are telling me they are very concerned that Diablo Canyon cannot withstand earthquakes that could occur in the area. Despite evidence in recent years of increased seismic risk at the plant, the NRC is proceeding merrily along the way with the re-licensing process for this plant and has failed to take action to address seismic safety concerns. My people are -- they're at a loss to understand it.

And at the San Onofre Nuclear Plant, which is closed permanently, there are many concerns about public safety during the decommissioning process. As I stated in our October hearing, I disagree with NRC's approval of exemptions to emergency planning requirements. Why would you do that with so many people living so close to this plant?

Because of this exemption, the plant's operator will no longer be required to maintain detailed plans for the evacuation, sheltering, and medical treatment of people residing the 10 mile zone. This is troubling. You know how populated the area, and there's thousands of tons of extremely radioactive spent fuel remaining at the site and millions of people -- millions living in close proximity.

So in closing -- and I will close in 10 seconds -- you cannot be a rubber stamp for exemptions from the nuclear industry. That is not your job. That is counter to your job. And I think you owe it to the citizens of my great state and the nation to make safety your highest priority. Thank you.

INHOFE: Thank you, Senator Boxer. And without objection, I want to enter into the record this article from Platt entitled, "Nuclear Safety Upgrades Post-Fukushima Cost \$47 billion," a very complimentary article to you folks. Senator -- Mr. Chairman, if you begin, and I'm going to ask you all to try to stay within your time.

BURNS: Thank you, Chairman Inhofe, and Ranking Member Boxer, and other members of the committee. We appreciate the opportunity to appear before you this morning to provide an update on our -- on the fiscal year 2017 budget request and the agency's current regulatory activities.

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As we said, the NRC is an independent agency established to license and regulate the civilian use of nuclear and radioactive materials in United States and to ensure adequate protection of public health and safety to promote common defense and security and protect the environment.

The resources we are requesting will allow the NRC to continue to carry out our important mission. The proposed 2017 budget is \$972 million and 3,462 FTE, full-time equivalent staff, excluding the Office of the Inspector General. The proposal represents a net decrease of nearly \$20 million and 90 FTE from the fiscal 2015 enacted budget. The request reflects a decrease of approximately \$74 million and 280 full-time equivalent employees from the 2014 enacted budget. The Inspector General component of the 2017 budget is \$12 million.

Consistent with the Omnibus Budget Reconciliation Act, our 2017 request provides for 90 percent fee recovery, resulting in a net appropriation of \$121 million. This appropriation is an increase of \$2 million compared with the 2016 enacted budget due to the inclusion of \$5 million in non-fee recoverable resources for advanced nuclear reactor technology.

Our 2017 budget request reflects our continuing focus on her important mission while continuing our Project Aim initiative. We are concluding the review of the rebates (ph) on a paper that outlines an additional 150 activities that could be eliminated or reduced without impact on safety for savings of about \$41 million in 2017, of which 10,000 -- 10 million -- excuse me -- has already been reflected in the fiscal 2017 president's budget request.

We cannot emphasize, however, strongly enough that will why -- while we expect to be a smaller agency as a reflection of workload reductions and efficiency gains, the need for the great majority of the services that we provide the American people remains unchanged. As we proceed, the agency remains mindful of the importance of its highly skilled technical staff and the need to maintain our expertise. We must keep a focus on knowledge management and senior staffs retire and new experts take their place.

I want to highlight one area the commission is attending to, improving our rulemaking process. The commission has revised its processes to improve its understanding of and where possible to reduce the cumulative effects of regulation and it is -- and in addition, the commission has recently directed the staff on a proposed plan to better define and enhance the commission's role in the early stages of rulemaking before significant resources are expended.

The commission is also considering a proposal to establish a single unified approach to tracking rulemaking activities so the public and stakeholders have real-time access to current information. We carry out our safety and security activities through two major programs, nuclear reactor safety, which includes operating reactors and new reactors, and nuclear materials and waste safety, consisting of fuels, facilities, nuclear materials users, decommissioning and low-level waste, spent fuel storage and transportation.

Our request in the operator reactors business line represents a decrease of \$1.7 million from the 2016 enacted budget. These work resources that we request will help with implementation of lessons learned from Fukushima Daiichi accident in Japan. The requested resources support to continue implementation of the most safety significant or Tier 1 enhancements that were identified after Fukushima, including implementation of our orders on mitigation strategies, spent fuel instrumentation, and severe accident capable hardened vents in completion the mitigation beyond design basis events rulemaking.

The bulk of the most safety significant enhancements for post Fukushima should be completed in this year, calendar year 2016. We expect to bring to closure our valuation of the longer-term Tier 2 and Tier 3 issues. We will inspect the work that's been done and ensure plants maintain their progress. We strongly believe that the United States plans are better prepared for extremists now than they were in 2011.

On a related note, the NRC recently issued letters than the nation's commercial operating plants about their 2015 performance. While the vast majority fully met safety and security performance objectives, three reactors at two

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sites, Arkansas Nuclear and Pilgrim, were deemed to be in the fourth or lowest performance category. To wrap up, we have requested our budget -- in our budget due to cover some new reactor to cover some new reactor activities, including the review of a small does modular reactor design expected from new scale and we would expect \$5 million -- we have asked for \$5 million in non-fee activities to cover development infrastructure for advanced reactors.

I thank you for the opportunity appear and would be pleased to answer.

INHOFE: Thank you, Mr. Chairman. Commissioner Svinicki?

SVINICKI: Thank you, Chairman Inhofe, Ranking Member Boxer, and distinguished members of the committee for the opportunity to appear before you today at this hearing NRC's fiscal year 2017 budget request and associated matters.

Our chairman, Stephen Burns, in his written statement on behalf of the commission has provided an overview of the agency's budget request as well as a description of several ongoing activities that are central to carrying out NRC's important work. I thank the committee for its consideration of our budget request. In the interest of time, I will ask if I may submit my brief oral statement.

INHOFE: Without objection.

SVINICKI: Thank you.

INHOFE: Commissioner Ostendorff?

OSTENDORFF: Good morning Chairman Inhofe, Ranking member Boxer and distinguished members of the committee. Chairman Inhofe, thank you for your kind remarks. It has been a distinct privilege to serve with this group of people for the last six years.

I'm in complete alignment with Chairman Burns' testimony. I'll make two specific comments. First, as mentioned by the Chairman, the commission's recent decision to provide duration to the staff to seek commission approval before embarking upon rule-making activities is a significant change and a major step towards improving efficiency.

Second, our budget requests \$5 million non-fee billable resources to further develop our regulatory infrastructure to review advanced non-light reactor technology implications. It is very important for long-term health of NRC in the nuclear industry that we retain the ability to license new reactor technologies.

In closing, I completely agree with Chairman Inhofe's comment that these oversight hearings are of extreme importance. Thank you.

INHOFE: Well, thank you very much. And again, good luck at the Academy. Commissioner Baran.

BARAN: Chairman Inhofe, Ranking Member Boxer and members of the committee, thank you for the opportunity to testify today. It's a pleasure to be here with my colleagues to discuss NRC's fiscal year 2017 budget request and the work of the commission.

With respect to Project Aim, I've been very impressed by the willingness of the NRC staff to take a hard questioning look at what work the agency is doing and how we're doing that work. The NRC staff has generated a list of 151 proposals that would have reduced cost in the coming months. The commission is deliberating on those now.

I think the vast majority of these items make a lot of sense, but I have concerns about several items including a few that would reduce inspection hours. In my view, Project Aim should not be about relaxing regulatory oversight of licensing (ph) performance and safety.

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On March 22nd, I traveled to Fukushima Daiichi to take a first-hand look at conditions at the site. The scale and decades long duration of the cleanup effort there are sobering reminder of the need to learn and implement the lessons of Fukushima.

Last month about five years since the accident in Japan, it's a natural time to take stock of where we are. I think it's clear that we've made significant progress, but still have a lot of work left to do.

Decommissioning is another important issue for NRC. As the Chairman mentioned in the last few years, five U.S. Reactors have permanently shutdown and three more have announced plans to do so in the near term.

I see two main purposes for the decommissioning rule-making effort that is now underway and both are important. First, to allow NRC to move away from regulating by exemption in this area. The exemption approach isn't efficient for anyone and it provides no opportunity for public comment.

And second, the rule making provides a chance for NRC and all of our stakeholders to take a fresh look at our decommissioning process and requirements. We need to thoughtfully consider stakeholder ideas with an open mind.

There are of course a number of other important efforts underway including small modular reactors coming up and the proposal for advanced reactor funding. We had to discuss these and then the other issues of interest. Thank you and I look forward to your questions.

INHOFE: Thank you Commissioner Baran. I would begin and I have three questions. All three for Chairman Burns.

The first two questions here should require a yes or no answer and I think you maybe already starting in on the areas that I will suggest here, the last one you probably will elaborate to it a little bit.

First of all, I referred sometimes to the then Chairman Shirley Jackson when she testified for this committee, sort of a 1998 time that I've been referring to, I'm quoting that the NRC has been a subject of a number of external reviews, some of them sharply critical, whether or not one agrees with these criticisms (ph) as we believe they are worthy of careful consideration.

The commission invited a number of these stakeholders, meeting (ph) stakeholders including some of the harshest critics to engage in a round table discussion open to the NRC staff, the press and the public. As anticipated, the meeting provided the commission with beneficial insights including a range of perspectives on the strengths and weaknesses of NRC Regulatory Programs and policies. Chairman Burns would you commit to holding a stakeholder's meeting within the next three months?

BURNS: Yeah, I, yes, I'll be willing to do that. I do meet with stakeholders across the spectrum.

INHOFE: OK.

BURNS: But I'll be willing to meet with them.

INHOFE: I appreciate that. Now following the 1998 Hearing, Chairman Jackson tests the NRC's executive director with action on a set of hyper (inaudible) tests identified in the stakeholder's meeting when we refer to and by this committee. The executive director responded in less than a month with the plan to address an issue that had been raised. Chairman Burns would you commit to test your executive director according and report your progress to this committee let's just say every couple of months?

BURNS: Yes, I would do that. I want to consult with my colleagues ...

INHOFE: Sure.

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BURNS: ... fellow commissioners and provide some direction. I think we probably can get some other ideas.

INHOFE: Would any of the other three commissioners object to this request I made?

BURNS: Right.

INHOFE: And lastly Chairman Jackson's single most important reform was to transition the agency from subjective inconsistent assessments of nuclear plant safety to the current reactor oversight program, which is based on objective measurable performance indicators, however, I understand there has been some of the staff backsliding on this so Chairman Burns how will the commission exercise its oversight of the staff to ensure the reactors oversight -- reactor oversight process is not compromised by undue subjectivity take at that?

BURNS: Well we've been engaged with the staff on the -- on the reactor oversight process. There are some aspects I think they are looking at. They are engaging with stakeholders now on that. I would expect the commission to be informed about that to the extent that there are changes that require commission endorsement or approval that those be provided to us and we have an understanding what the different viewpoints are. So I think as a part of our normal process we would do that. I don't know what my colleagues think of that (ph).

INHOFE: OK. Yeah. I have another minute and a half. Anyone would have comment on that, the other three commissioners?

BARAN: I would just add that I think the staff takes it very seriously. The rigor that we have right now in the reactor oversight process they're very conscious of that so it's something that the commission is focused on and we're talking to the staff about, but I think it's something that the staff is very clear that they want to maintain the rigor of the reactor oversight.

INHOFE: Yes and you know when I say there could -- it could be that reports we've gotten are not all that accurate, but we understand that there has been some resistance to this. And I'd just ask you to do indicate and to eliminate that. Any comments on that?

SVINICKI: Chairman Inhofe, I agree with the Chairman and Commissioner Baran. The commission has been engaging rather actively with the staff as they develop any proposals to modify this process. Although there may be modest adjustments that are within their authority to make, if something has a significant impact to the program, I'm certain that the commission would want to put its imprimatur on that.

INHOFE: OK and let me be clear when I -- it's not -- our situation today is not analogous to what it was in 1998, but 1998 having gone four years without an oversight that was a pretty extreme time and I know this is not the case now, but there are some indicators that there has been a more relaxed attitude there should be. Thank you very much. Senator Boxer.

BOXER: Thank you so much. I want to follow up on this meeting with stakeholders. How do you define stakeholders Mr. Burns?

BURNS: I think those members in non-governmental organizations, members in industry licensees that can be local groups.

SVINICKI: Community groups.

BURNS: It's a wide variety of. And I...

BOXER: Good because this is not just a meeting that the Chairman is asking for you to have with the industry, it's the industry, it's the non-profit groups, it's the community groups, is that correct?

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BURNS: That's correct. And that ...

BOXER: Good. That's good.

BURNS: ... and part of my -- and part of my -- what I do and for example I'm meeting with an NGO tomorrow on some of their concerns and ...

BOXER: Yes good. BURNS: ... I meet with a lot of people.

BOXER: That's good. Well to me it's not about a lot of people, it's about stakeholders, you know. And that's -- and I agree meeting with stakeholders as long as it's everyone and I -- and meeting with them at the same time is critical. It builds confidence all around. And specifically on that I would like to arrange a meeting with you and the stakeholders in San Onofre as well as Diablo. That would include the operator of the power plant, this concerned community, the citizens around there, the environmentalists around there as well.

Could we work together on that?

BURNS: Certainly Senator.

BOXER: And I would love it as many commissioners could attend it would be great. It's not just meant to be for the Chairman; he's got a lot on his shoulders. So anyone of you that wants to be at that meeting and I will organize that and get back to you.

I wanted to comment on the article that my friend, he is my friend put in the record, nuclear safety upgrades post-Fukushima cost 47 billion. When you read the story, what you find out is that 90 percent of that is being spent outside the United States of America, most of it in Japan because of the disaster and the turning up now these diseases. And so I wanted to point out that the -- our nuclear industries quoted in the story saying the industry has managed its response to Fukushima while avoiding costly new requirements. So I just wanted to circle those points in the story and I'm glad the story is in the record because it proves my point that what's happening here is just not moving fast enough, which leads me to the last part of my questioning. I think I gave you this Mr. Burns.

BURNS: Yes.

BOXER: And I know that you've -- everyone has seen it and agreed that it's accurate, but I'm going to go through it just to show the people, the American people how little is really being done post- Fukushima.

Almost four years ago, your commission, your task force laid out these 12 ideas. They were senior members of the NRC staff. I don't know who is still there. If I was working there, I'd probably quit given the fact that nothing has been done. But it's almost four years and so I'm going to go through each one of these and all I want from you Mr. Burns if you would is a -- is if you agree with my analysis of each one and if you don't explain why.

Number one, improve regulatory framework. The NRC rejected staff proposals on that. Is the correct?

BURNS: The commission decided not to provide...

BOXER: That's what I'm saying.

BURNS: ...to proceed with that. BOXER: That's what I just said. So the commission said no to the NRC staff proposal regulatory framework.

Two, study and upgrade seismic, flooding and other hazard protections. My understanding is that there is no target date set for permanent safety upgrades on seismic, flooding or other hazards. Is that correct?

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BURNS: I'm not sure that that's correct. We have seismic and flooding analysis from most of the plants. We have to wait on some ...

BOXER: No, I'm asking do you have a target ...

BURNS: ... in some circumstances of there were not a need for further seismic and flooding upgrades.

BOXER: OK. Well your staff said...

BURNS: This is important work and progress is made on it.

BOXER: Whoa, whoa, whoa. Your staff said that there needed to be upgrades on study and upgrade seismic, flooding and other protections. My understanding is you are implementing some, but no target date has been set for permanent safety upgrades. Now, your staff said that is correct. Is that correct?

BURNS: I'm not sure of the context Senator. I'm happy to look at that and talk to.

BOXER: Does anyone else understand the context? Could you Mr. Baran?

BARAN: I think it's correct that there's no firm date by which any necessary upgrades would be made. That's accurate.

BOXER: Thank you. So that's accurate. Three, upgrade to prevent or mitigate seismicly-induced fires or floods. My understanding is the NRC rejected that action. Is that correct?

BURNS: I think that's correct because we felt that was bound by the existing seismic -- by existing protections that we provide.

BOXER: I understand that. All of these are improvements. They're not status quo.

BURNS: Yes.

BOXER: You rejected -- the NRC rejected doing this even though your staff, senior staff after Fukushima four years ago said to do it. Number four ...

BURNS: No, what they said to do is to evaluate whether that would provide additional benefit.

BOXER: No, they said to upgrade. BURNS: Now, we've been responsible about doing these things.

BOXER: Upgrade. Upgrades. They want upgrades in the plants to prevent or mitigate seismicly-induced fires or floods. You said no. Let's move on.

Mitigation for events like blackouts. The final rule is supposed to be due this year. Is it coming?

BURNS: Yes.

BOXER: When?

BURNS: Toward the end of the year as scheduled.

BOXER: Right. Can we say by December?

BURNS: Yes.

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BOXER: Thank you.

BURNS: And the plants have already implemented per orders imposed by this commission in 2012, improvements to address this. And in fact it went beyond what the near-term task force requirements were.

BOXER: I see I've gone over my time, so I'll wait for a second round to go through the rest of these. But we'll ask you the rest of these.

INHOFE: Thank you Senator Boxer. Senator Rounds.

ROUNDS: Thank you Mr. Chairman. Chairman Burns as part of the oversight review, there are just some specifics on the budget proposal that I'd like to ask and ...

BURNS: OK.

ROUNDS: ... if you -- thanking you to respond to them for the record that would be fine.

BURNS: Thank you.

ROUNDS: Your testimony states that the FY 2017 budget represents a decrease of \$19.8 million from 2016, 15 million of which is a decision not to fund the university grant program. That leaves a decrease of 4.8 million and 90 FTE in the NRC's office. Chairman Burns, I would expect that there would be more of a cost savings of \$4.8 million considering the decrease in FTEs. Is the NRC spending some of the savings and efficiencies in other activities?

BURNS: No Senator, it's not. And one thing I would note with respect to the university -- Integrated University Program and in terms of the President's budget reflects at judgment, the administration believes that those activities ought to be consolidated. We recognize that we over a number of years we receive the direction to continue with that and have essentially absorbed that program and we try to implement it responsibly. But to your -- to your other point, we are looking at -- we have identified savings. One of the things as I said in both in my submitted testimony and my oral testimony as part of Project Aim, we have identified about \$30 million beyond the President's budget submittal where we think through the re-baselining we can achieve additional savings.

ROUNDS: And when can we expect to see the savings and the efficiencies fully reflected as actual decreases in the NRC spending rather than if it is being reallocated, but when will we see that actual reflected in the budget?

BURNS: Well we're seeing -- we see some of that in actually our implementation of fiscal years 2016 budget. And as I say although our -- the President's budget came in at 970 million, which included an incorporation of some of the identified gains or efficiency gains in areas where we thought we could lose, we think there is more there so that for the fiscal year 17. So there is some work we're doing this year where we think we're achieving those gains and I think further consideration of fiscal 17 budget we could -- we can achieve more.

ROUNDS: OK. Licensees must seek NRC review and approval for many modifications to equipment and procedures. As such this is a fairly routine activity and a significant portion of the NRC's workload. However, the NRC seems to be struggling with the backlog, unable to complete their reviews on time in spite of the fact that from 2012 to 2015 the industry filed fewer licensing action requests than the NRC had budgeted to review.

The NRC used the review -- used to review about 1,500 licensing actions each year at a time when the agency had fewer people and fewer resources. What's changed since then to cause this recurring backlog?

BURNS: Well thank you for the question, Senator. Actually what -- where we are, we have come to the point where we have substantially worked down the backlog. I think a major cause of the backlog was a need to focus on the potential safety enhancements post-Fukushima.

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What we have been able to do over the last few years is work that backlog down. I think it was like about 100 actions were above our -- we're in a backlog about a year ago, so we're about 24 now and then we expect to work them off within the next year.

Progress to date through fiscal 2016, we are just about what our target of 95-percent completion. We're at about 94 percent. The staff I know will work to get that better. So I think we're in a better plan.

I think the simple answer to your question, I think a lot of attention, necessary as it was on Fukushima, put some of the licensing actions hold, create a backlog, What we've been trying to do and I think we've done successfully is work that off.

ROUNDS: OK. Look, I've got another question, but rather than that I just want to give you the opportunity and I know the Ranking Member Boxer had asked you a question and she was out of time. I've got a few seconds left, is there any part to her question that you would like to respond to with regards to when staff recommendations are made and sometimes the commission decides not to accept or may have other things, is there anything you like to respond to that you didn't have time to when the Ranking member was asking the question?

BURNS: Oh I think she has given me a fair opportunity to answer her question. The only context I would give is that the near-term task force. I was here as general counsel then and I have a lot of respect and there are a number of the folks who are still working with the agency and proudly do so.

But what I would say is this is the task force had an enormous task in 90 days and say what are the things we ought to be looking at and the commission and the staff took that seriously. Staff added some additional things and we took those seriously.

So I think from my standpoint we may have disagreements about whether some of those things should be implemented or not, but I think we've taken them seriously and I intend to continue to do so.

INHOFE: OK.

BURNS: Thank you sir. Thank you Mr. Rounds.

INHOFE: Thank you Senator Rounds. Senator Carper.

CARPER: Thanks very much. Welcome one and all. It's good to see you. Commissioner Ostendorff, tell us what you're going to be doing next please.

OSTENDORFF: Senator Carper, I have accepted the position at the Naval Academy as the distinguished visiting professor of National Security and I'll start teaching there in August.

CARPER: All right. Well as we see the Navy fair winds and a following sea. Thank you for all of your service for our country.

I -- Mr. Chairman, thank you very much for bringing us together for this hearing. I recently wrote a letter to Chairman Burns about the challenges of safely licensing advanced nuclear reactors, I was encouraged to see that in the NRC budget request for 2017 includes \$5 million to develop the licensing infrastructure and I will just start off by asking Chairman Burns and others who like to join in, what in fact to do with the \$5 million targeted toward the development of advanced nuclear reactor technology regulatory structure in terms of hiring appropriate staff and it was going to do it how many might be needed in technology development and some other activities. Could you start off with that please.

BURNS: Certainly Senator. Thanks for the question. Probably three areas that we would focus -- we focus on and then -- and with the \$5 million and one, focusing our licensing infrastructure where given that the current

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infrastructure focuses primarily on light water reactors, these advanced reactors are a lot of non-like water technologies, are there areas where we need to address there?

Part of it is and it is technical preparation, getting some of the right -- some of the right staff, understanding where we may be going. We're actually talking with our Canadian counterparts about the processes.

One of the concerns is whether people have to go all or nothing in terms of coming in with an application, other ways of doing in effect what we would call topical reports that sort of give and maybe not a final sign off, but it gives encouragement that says that you look like you're on the right step, we don't see a primary safety problem and we're looking at that and our Canadian colleagues have a process that do that and we're encouraged to do that. And I think again as outreach we had a successful workshop. We co-host it with DOE last year.

CARPER: I'm now going -- I'm going to interrupt you.

BURNS: Yes.

CARPER: I just ask some specific questions if I can (ph).

BURNS: OK.

CARPER: How long do you expect the regulatory development process to take?

BURNS: I couldn't hear you, sorry.

CARPER: How long do you expect the regulatory development process to take?

BURNS: I think that's over probably several years. I don't think we really expect an advanced like, excuse me, an advanced non- light water application probably to the mid-2020s so we have some time there. There are work underway and I think we would continue there.

CARPER: Do we expect to see some of the requests in coming years?

BURNS: Probably it -- what we understand I think this is some of the -- our cooperation -- the information we got from DOE and in some of its initiatives, I think around 2025.

CARPER: OK so in terms of how much money and roughly how much time it will take to put the appropriate regulatory structure in place we're talking about eight or nine years?

BURNS: I'm not sure it would take that long. What -- Part of I think what this \$5 million helps us do is understand where the gaps are, what other work we would have to do -- what we would have to do, but I think we want to be and I say I encourage those who are interested in the industry to talk to us. We want to be at a place where we're ready and we have identified the issues that we think need to be addressed. CARPER: OK and Commissioner Ostendorff, any idea when we might -- you might anticipate advanced nuclear reactor technology applications being presented to the commission, any idea?

OSTENDORFF: Thank you for the question Senator Carper. I spoke at the conference at Oak Ridge National Laboratory back in February of this year. I met with a number of groups that are looking at the better side, developing new technologies, that communication with the Nuclear Infrastructure Council, Nuclear Innovation Alliance, Nuclear Energy institute and Third Way.

Four different groups are working this area. We don't have decided (ph) a predicted date, but we think that's possible the next five years to receive an application.

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CARPER: Do you think that the NRC staff have the non-light water reactor design modeling skills are going to be required to consider applications for advanced nuclear reactors?

OSTENDORFF: Let me answer that by using an anecdote if I may. Right behind me is Amy Cabbage. Amy, please raise your hand. Amy is my reactor assistant. She was a member of the near-term task force and Fukushima issues and have been my reactor assistant for last three and a half years.

Amy 15 years ago worked on the pebble-bed reactor technology. It was submitted to the NRC and those plans were foisted at the industry's request. I say we have many other people like Amy at NRC who has some experience working with non-light water reactor technologies and we believe we can fully capitalize new skill sets going forward.

CARPER: OK. Thanks Jeff. Thanks so much again. Thank you for your service. Great to see you. Same to you Commissioner Svinicki and to you Commissioner Burns. Thank you all for joining us today.

INHOFE: Thank you Senator Carper. Senator Barrasso.

BARRASSO: Thank you Mr. Chairman. Chairman Burns thank you. I thank the members for being here today.

I want to discuss the NRC permitting process. During its licensing review -- During its licensing reviews, the NRC staff frequently poses Request for Additional Information and they call it RAI, Request for Additional Information to licensees, to applicants, you know, it's clear the NRC should request any information necessary to make a safety determination and process the information because the process itself can be burdensome if it's not properly managed and that's one of the concerns about how this -- how this works.

Chairman Inhofe and Senator Capito and I have tasked GAO of examining the very problem. I will just give you one example of why we feel the process warrants some scrutiny from you as Chairman with regard to a request for additional information, requests made by the NRC to the United States Geological Survey in regards the renewal application for a research reactor they have in Denver and this is what the NRC asked the United States Geological Survey and this was -- this is recent February 8, 2016.

It says the application indicates that the United States Geological Survey is a Federal Bureau within the United States Department of Interior. To comply with 10 CFR 50.33 D, the staff, your staff request that the applicants state whether the United States Geological Survey is owned, controlled or dominated by an alien foreign corporation or foreign government and if so give details. This is what your staff has decided to ask the U.S. Geological Survey.

Now, I'm going to quote what the NRC's instructions for developing these requests for additional information because you need to get additional information some time. Your own instruction say before developing a request for additional information, the staff should ensure that the information isn't already available to the staff or that the answer could not reasonably be inferred from general knowledge or previously docketed correspondents.

So I think not only can it be reasonably inferred that anyone outside the NRC staff that the -- that the United States Geological Survey is part of the Federal Government. The fact has been docketed in previous correspondents with the NRSC's -- the NRC's staff. They had -- They actually asked the same question in an -- in an RIA in 2010. They got the same answer.

It just seems that project managers are supposed to be responsible for ensuring that these requests for additional information are actually necessary on in companies at my state or other states, but do you have any idea how this sort of thing keeps happening?

BURNS: No Senator and I would agree that that question is unnecessary and I appreciate the request of the community maybe to have GAO take a look at it. It is something and I think our EDO is committed to bringing

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discipline, bringing training to it. This may be in part one of these things in terms of transition from, you know, the generational share from older folks like me who are given fewer at the commission to some of our young staff, but yes, I mean as a lawyer I know for example I would go up to a judge and I said your honor, will you take official notice, judicial notice that the USGS is a U.S. government agency.

We can do better. I hope. I think the review will probably help us do there and I think our staff will continue to be vigilant, but we need to be disciplined because it is important. There are important questions we have to ask during the review, but we need to focus on the things where those, you know, those touchy safety issues or undefined things so I appreciate the example.

BARRASSO: OK. Thank you. One -- Another question, I asked the question for the record back in October 7th hearing that essentially as how might a longer license duration help the NRC manage its workload a little better with regard to Uranium Recovery Facility and I think you said extending a license term would reduce the administrative burden associated with the license renewal process for both the NRC I think you said the staff and the uranium recovery licensees and I agree. Will you therefore commit to me to help pursue extending the license duration for uranium facilities for, you know, the reason you had stated? You know it used to be five years extended. It's a 10 back in the 90s, which helped, but it takes about five years to get through the full process.

BURNS: I think that's something we can look at. As you noted, we had extended before. I think my understanding and as a general matter that given where we are in terms of some of the licenses or before the renewals, it becomes a critical issue, more critical issue in the early 2020s, but that gives us some time to I think consider that and I think the staff will be willing to do that.

BARRASSO: Thank you. Thank you Mr. Chairman.

INHOFE: Thank you Senator Barrasso. Senator Gillibrand.

GILLIBRAND: Thank you Mr. Chairman. Thank you Madam Ranking member. As I'm sure you're aware, last week Entergy, which operates Indian Point Units 2 and 3 in New York discover that 227 baffle-former bolts inside of Unit 2's reactor core are degraded, which is more than 10 percent of the specific type of bolts using the reactor. My understanding is that these bolts are used to hold and scatter (ph) the core former, which surrounds the nuclear fuel. Do you have any information about whether there was any degradation of these bolts detected prior to this most recent inspection?

BURNS: I'm not -- Senator, I'm not sure. I can -- Let me get back to you on that whether there were indication. I don't the -- As you said, the inspections weren't started after defueling and identified and I want to give you the best answer I can.

GILLIBRAND: OK. Would you have concern about other type of bolts if that was indeed the case?

BURNS: I think you're concerned about, yes, you're concerned about the bolts there and this is part of the monitoring I would expect at plants. This is a type of equipment that you wanted to see.

GILLIBRAND: You would expect that kind of monitoring?

BURNS: Pardon.

GILLIBRAND: You would expect that kind of monitoring?

BURNS: Yes that's what happened here -- what's happened here.

GILLIBRAND: OK then I would urge the same inspection for Unit 3 because they have decided not to inspect Unit 3 because it's three years younger. I think -- I think that's a legitimate reason not to inspect Unit 3.

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BURNS: There are, yes, actually I -- my understanding from my staff is that there are that will be inspected in several years. It has operated last Newtonic plus.

GILLIBRAND: Yes, I would link several years as 11 percent is degraded and you didn't expect to find degradation. It means your expectations are wrong so I would not wait a few years. I would ...

BURNS: OK, got it.

GILLIBRAND: ... inspect Unit 3 immediately.

BURNS: Take that into consideration Senator, but I did think the technical evaluation of staff and make sure that they believe that the timing is appropriate.

GILLIBRAND: Your technical evaluation concerning Unit 2 was flawed so I would be highly concerned that their technical evaluation concerning Unit 3 is also flawed and I would request you to do the inspections now. It was unexpected to have 10-percent degradation. One of the bolts couldn't even be found. That's highly alarming to me given that it is just 50 miles from 8 million people.

We do not want to have any problems at this power plant and I think you have to be more concerned than you might be otherwise given the failure to know that 10 percent of your bolts were degraded. So close to the rafter, I just don't -- I think it's very unwise and I think it's unsafe.

So who decides? Who is the technical decision maker here?

BURNS: The NRC considers the -- evaluates the information it has. The licensee has programs in terms of monitoring and maintenance and those are integrated together.

GILLIBRAND: So when do you step in and require the infrastructure issue to be treated as a significant safety issue for the plant?

BURNS: When we -- When I -- We identified it as a significant safety issue and I was ...

GILLIBRAND: Is that percent of degradation a significant safety issue?

BURNS: I would be happy to consult with our -- with our staff in terms of what their evaluation, they're evaluating what the licensee is doing and examining there and I would expect us to take that information into account.

GILLIBRAND: Listen, I like a written response to these questions specifically whether you think 10 percent degradation of bolts is a safety issue, if not, why not and if you do then I would like you to evaluate (inaudible) plan and make recommendations about what they should do instead. Does anyone else in the panel have a comment to this concern?

BARAN: Well Senator let me just add. I think the written request you ask for is completely appropriate. We should do that. You should have a complete answer to those questions.

My understanding is that the number of baffle bolts that are potentially problematic in this case is potentially a larger number than we've seen in the past within the plant that had this issue so I know it's something the staff is looking at very carefully. We should get you the answers you're asking.

GILLIBRAND: Well I like aggressive oversight here. Both Indian Point Units 2 and 3 are currently in a period of relicensing. A major component of relicensing is the management of AG Infrastructure.

Is it fair to say that as you go through the process in evaluating a plant for relicensing there are certain set of

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assumptions made on what you expect the condition of the plant's infrastructure to be and how the plant will operate if it is relicensed based on the past performance of safety records?

BURNS: Senator, I would agree essentially with what you said. The focus on license -- on license renewal tend to be on aging management. I'm looking at this and in fact I believe the issue, the question of inclusion of the baffle bolts is a matter in contention within the license renewal hearing, but we can't comment on the, you know, the outcome of that. I think it's still going on, but that's the -- that's the focus right. I think I would agree with your general characterization.

GILLIBRAND: So if you find that degradation was higher than you expected, will you then go back and challenge other assumptions you made in the review for your licensing?

BURNS: If that's -- If that's appropriate.

GILLIBRAND: Meaning?

BURNS: I mean what that ...

GILLIBRAND: If your, sorry, if your assumptions were wrong, I would like you to go back and look at all of your assumptions concerning degradation.

BURNS: We would look at -- We would look at our assumptions.

GILLIBRAND: Thank you. Thank you Mr. Chairman.

INHOFE: Thank you Senator Gillibrand. Senator Capito.

CAPITO: Thank you Mr. Chairman. I thank all of you for being here today. Chairman Burns, I listen to your testimony and I just want to make sure that in terms of the budget and your FTEs, your employees where the numbers are. I understand that in 2005 your budget was 669 million and you had just over 3,100 employees and today you're overseeing a small -- I think we brought this up -- brought this up several times, smaller nuclear fleet and considering for fewer licensing actions, but you're requesting 982 million and over 3,500 employees.

I know Project Aim has specifically aimed at this issue and I applaud your progress. Is it -- How far along is Project Aim and how much longer you could plan to continue and do you think that will be shrinking the workforce number of employees? BURNS: Yes, thank you for this question Senator. Project Aim in terms of the particular tasks that were identified when it began is pretty far along. As to baseline (ph) paperworks, the commission will issue its final guidance on I think very soon. It was one of the main steps.

We have some additional papers or -- and recommendations to come from the staff for example on the consolidation of the new reactors and then office of new -- recombining the new reactor office with the nuclear reactor regulation office, a few things like that.

The EDO and the CFO have tasked -- given some tasks in terms of further looking at the corporate support offices and potential efficiencies and reductions there.

So the main activities that were identified in the Aim Program were I think come to close this year.

CAPITO: Yes.

BURNS: The longer term issue and I think I've been talking to the EDO and I think my fellow commissioners and let them add if they wish is really incorporating sort of the ongoing awareness and an idea of looking at how we do our work to assure we get the safety security benefit that we need while doing it effectively and efficiently. That's a

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longer term challenge once with -- I think most of their Aim activities conclude this year.

CAPITO: Does anybody have any other comments on that?

OSTENDORFF: Senator, I would just add and to reinforce Chairman's comment that there is still more work to be done both in corporate support as well as in some of the programmatic activity lines and I have recommended to doing that work.

CAPITO: Thank you.

BURNS: Just to briefly add, just to give you a couple of concrete numbers that I think illustrate how aggressive the effort has been. At the beginning of fiscal year 2016, we had 3,628 FTE.

CAPITO: Yes.

BURNS: By the end of FY 2017 so two years later ...

CAPITO: Yes.

BURNS: ... we expect to see that number dropped to 3,344 if all of this will be signing.

CAPITO: Yes.

BURNS: Items are approved. That's 284 fewer employees ...

CAPITO: Yes.

BURNS: ... in two years or eight percent -- about eight percent of our workforce. That's actually pretty significant decline we seen.

CAPITO: And you're already on your way because you're like 35 ..

BURNS: That's right.

CAPITO: ... something at the present time.

BURNS: Yes.

CAPITO: Chairman Burns also you were directed by appropriators to discontinue the practice of carrying over budgeted funds from one fiscal year to the next, are you carrying over any funds in this fiscal year?

BURNS: Well our plan is obligate the funds that we've been appropriated in ...

CAPITO: Right.

BURNS: ... 2016. There may be at the end of the -- I'm not sure we were directed not or well with respect to potential carryover, there is the potential for some at the end of the year or some deobligation, I think it's somewhat less than 25 million -- \$25 million.

CAPITO: Well I mean I think you can understand, you know, in tight times on the Appropriations Committee, one appropriate to the proper amount for that particular year because there's a lot of give and take and a lot of flat in the budget and I say you can understand why that would be an issue.

Another issue that we're having trouble getting conflicting numbers on the number of rule makings. They're in

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progress right now. We've been given numbers between 43 to 60. Do you have an accurate number for that?

BURNS: Yes, what we did and this is one -- quite honestly one of my frustrations and one of the reasons why I ask for a tasking to say let's get a consistent reporting on these issues.

We have what will be called rule-making activities about 89 and part of that 89 is there are a number of those things that are for example petitions for rule making. That means the industry or a citizen can file something. We have an obligation under the law to look at that.

We can probably give you a better breakdown for the record, but a number of other things are things like incorporating industry consensus standards, cash certifications, things like that that the industry wants, but we have I think a good handle on what the number of "rule-making activities are."

And one last point is within those 89 say the staff is identified for potential elimination a number of rule making so that we would take those off where we see low, you know, no for limited value in proceeding. CAPITO: Right. If you could get me that maybe more details ...

BURNS: OK.

CAPITO: ... on that.

BURNS: I can try to give you a better breakdown.

CAPITO: All right. Thank you so much.

BURNS: Yes.

INHOFE: Because a vote has started and we're good for another probably 15 minutes here, we're going to continue. Senator Boxer wanted to make one statement it is reasonable.

BOXER: Yes. Right. Really quickly and thanks Mr. Chairman. We only got to four of the recommendations. Could I count on you to answer my questions in writing ...

BURNS: Absolutely.

BOXER: ... on the rest of the list and you know, I know that you're taking this seriously. That's the difference between that and implementation so I appreciate all of you being here today and I thank you Mr. Chairman.

INHOFE: Thank you Senator Boxer. Senator Markey.

MARKEY: Thank you Mr. Chairman very much. I just want to once again put the commission on notice that the NRC is still not in compliance with its own policy and the law surrounding providing documents to members of the oversight committee. It has been almost two years since I first requested documents related to the indictment of five members of the Chinese Military on charges of hacking and stealing nuclear reactor trade secrets from Westinghouse in 2010 and 2011 and at the very same time that these stuffs occurred, Westinghouse was hosting month's long visits for dozens of unescorted Chinese personnel at U.S. Nuclear Reactors.

I have narrowed my document request. I have sent several letters. I have raised this in several hearings of this committee. I have raised it in private conversations with the Chairman of the Commission.

My staff has been briefed by your staff. The commission still hasn't even provided me with the documents that others at the agency have already made it possible to get access to.

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I am not willing to accept briefings in lieu of my document request nor is it helpful for the commission to ignore the need to respond to my request until several days before the hearing when you ask for a meeting on this issue, I expect the commission's response to the -- I expect the commission's response to my request.

Now, I guess I wanted to put that out in the record and I would ask the commission again to comply with the request for that information.

In 2014 and inside at the Doel Nuclear Plant in Belgium sabotaged the reactor by draining all the oil from the reactor turbine. This was not all that sophisticated. It was basically the nuclear reactor technology equivalent of slashing someone's tires, but it caused more than a hundred million dollars in damage.

Two years earlier, a contractor at the plant who had passed a security background check traveled to Syria to fight with Jihad's (ph) groups there. This incident is similar to that of Sharif Mobley, an American who worked at U.S. Nuclear Plants and subsequently fought with Al-Qaeda in Yemen.

Disturbingly, the background check investigations that are required for nuclear contract workers allow them to self-report their foreign travel. We also recently where in (ph) two suicide bombers in the Brussels terrorist attacks and collected video footage at the home of a Belgian nuclear official.

Commissioner Baran, do you agree that in light of these disturbing reports from Belgium the commission should take a new look at its design bases threat force on force mock terrorist exercises and other security regulations?

BARAN: I had to be careful in answering that just because the design bases threat issues are classified. I can say that the NRC staff is taking a look at this issue and I believe that's appropriate.

BURNS: Yes, I think the events you raised are something that is being looked at by our security folks.

MARKEY: We know that nuclear pamphlets (inaudible) (inaudible) sales returns at the top of the terrorist target list so I recommend very strongly that you put in place a program to reexamine the measures that we have in place. That's where they're going and we've been warned and I think it's critical for us to have headed those warnings.

The NRC is currently doing a rule making to address decommissioning in light of the many reactors that are now assumed to be shutting down including the Pilgrim Plant in Massachusetts. The commission has told the staff that the new rule should consider the concerns of state and local officials. The nuclear industry wants the commission to eliminate the consideration of state and local official's views from the rule making all together.

At a recent NRC meeting, Massachusetts State Senator Dan Wolf said the industry suggestion was absurd. Stating -- Starting with Commissioner Baran, do you all agree that it would be absurd to eliminate all consideration of state and local official's concern in your decommissioning rule making?

BARAN: I agree that would be a very bad idea. I think we absolutely as part of that rule making shall look at the appropriate roles of state and local governments in the process.

MARKEY: OK. Can we keep coming down the panel, do you agree with that one?

OSTENDORFF: Senator Markey, we had a good commission meeting on this topic here last month. We heard the State Senator from your state, his comments and we're considering all his comments as we go forward here. Thank you.

SVINICKI: Senator that NRC staff is engaging and looking at all of the public input that came in the comment period as close and I'll look forward to their evaluation of all of that public comment.

MARKEY: Mr. Chairman.

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BURNS: Really same response. I haven't made up my mind as to what I looked at the comments. I want to say my appreciation to Commissioner Baran for suggesting this meeting and I think when you and a number of others watch was this is one of the (inaudible) for hat (ph) holding that meeting on the decommissioning issues.

MARKEY: OK. Well again only one of you can right now say yes. The state official should be listened to and I want to think that's not a good.

BURNS: Well I don't think that's what I said. That's not what I mean to imply right. I think we need to take into consideration those views in this process.

MARKEY: OK.

INHOFE: Right. Thank you very much. Thank you Senator Markey. Senator Fischer.

FISCHER: Thank you Mr. Chairman. Chairman Burns I like to ask you a few questions about the backfit rule and it's a topic that I've raised in several of our committee's oversight hearings of the NRC in the last two years.

As you know, the backfit rule says that before the NRC can impose a new requirement on an existing licensed facility, the NRC must first demonstrate that the new requirement results in a substantial increase in the protection of public health and safety and also that it's cost justified and this committee has expressed concerns about how the NRC's use of subjective qualitative factors as opposed to objective quantitative factors can erode the backfit rule and undermine I believe its important purposes and I've been very concerned about that and Sir are you aware of the compliance exception to the backfit rule and do you believe it should be used by the NRC staff to avoid the backfit rule in cases involving changes and interpretations of existing regulations?

BURNS: Yes Senator. I am aware of the compliance exception to the backfit rule. It has a role and it should be applied that way.

I don't view it as a way of evading the backfit rule, but a way of looking at what is the requirements, what are your compliance, if it fits in that, otherwise, you need to apply the backfit rule, the substantial additional protection elements. FISCHER: So are you saying that the staff, your staff would be justified in requiring extra steps for regulation that don't take into effect the cost?

BURNS: No, what I think I'm saying is that there are -- there may be circumstances in which the question or the issue between a licensee and a staff is whether or not some corrective actions, some other action by the licensee is really something needed to comply with existing requirements. That's an exception. I don't mean the exception to shallow the rule, but that is a stated exception the commission adapted in the -- in the mid-1980s when it reformed the backfit rule.

FISCHER: And the rule then should still be in effect?

BURNS: Yes.

FISCHER: It should be considered at all times?

BURNS: The backfit -- Well the backfit rule has its substantial additional protection piece of it. Included within the backfit rule are these limited exceptions to whether or not you got engaged in the cost benefit analysis. I'm just saying I think the rule should be applied appropriately in the circumstances we find ourselves in.

FISCHER: And cost should be considered?

BURNS: Cost should be considered where it is not a compliance backfit or if there are -- there are, you know, for example a statutory, there's a statutory requirement that's been imposed by the Congress to do something.

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It's part of a normal evaluation and consideration of the backfit rule and what I don't want to leave you the impression that I'm saying that the exception should shallow the rule. It's part of the normal process of evaluating whether a particular action and is -- requires that the backfit analysis, the substantial additional ...

FISCHER: I think this gets us back to the discussion on looking at if it's a subjective factor or a -- an objective factor when we consider the rules and regulations so would you agree with me on that?

BURNS: Well it ...

FISCHER: And I would always come down on the objective side of this.

BURNS: Well and the commission's guidance ...

FISCHER: I think that's been clear.

BURNS: Yes and I think the commission's guidance issued about a year ago or so emphasized as we expect the application of quantitative factors and we've given guidance and I would expect that as the process of engagement between licensee and staff goes on that that guidance of the commission would be adhered to. FISCHER: OK. Thank you. Also in a letter that was dated January 20th of this year, Nuclear Energy Institute discussed concerns about misuse of the compliance exception and for historical context the NEI letter quotes from the Federal Registered Notice from the 85 backfit rule where the NRC explained new or modified interpretations of what constitutes compliance would not fall within the exception and would require a backfit analysis.

I think this is getting at it again. Would you agree for the NRC staff to be able to use that backfit rule's compliance exception that the staff first of all has to show some omission or mistake that's occurred within that licensed facility that was previously approved by the NRC?

BURNS: I think -- I think my answer is yes and let me give some explanation. The provision I think you quoted from the Federal Register the statement of consideration for the backfit rule are significant example -- significant example or significant guidance from the commission with respect to the appropriate application of the compliance exception so and the context -- and I'm aware of the NEI letter, but I'm not aware of all the details of some of the dialogue, but I would expect in the dialogue between staff and licensee that that would be focused on and in terms of the decision I think (ph) those are persuasive -- those are persuasive words or persuasive criteria that the commission set at that time so you know I would not discard -- what I want to say is this, I don't think they are easily discarded.

FISCHER: Thank you Sir. Thank you Mr. Chairman.

INHOFE: Senator Boozman.

BOOZMAN: Thank you Mr. Chairman. Chairman Burns thank you for your upcoming plans to visit Arkansas Nuclear One. As you know, nuclear power improves air quality.

Each year, Arkansas Nuclear One allows our (inaudible) this air emissions for example in just one year the plant reduced the sulfur dioxide by about 14,000 tons. It reduces nitrogen oxide by about 10,000 tons and it reduces CO2 by nearly 8.5 million metric tons. In other words, thanks to nuclear power in Arkansas. It reduced acid rain, smog and ground-level ozone.

The operation of our Arkansas Nuclear One directly creates more than one thousand good paying jobs. It provides a reliable source of over 1,800 megawatts of clean power to Arkansas. The plant provides affordable power that supports many other jobs and industries across our state that helps families keep the lights on.

The NRC staff have been working diligently to address a few issues that were discovered at the plant following the serious industrial accident that occurred three years ago during maintenance on the non-nuclear side of the plant. I

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applaud the efforts of Energy and the NRC staff to address these issues while keeping the plant safely operating. We really are very, very proud of our nuclear plant. Just a question. We want to make sure you have the resources you need to do the work and we want to make sure that the NRC budget is right size for today's workload. The NRC's work on Project Aim is intended for more close -- to more closely aligned NRC's resources with the actual workload. We are making sure the NRC meets the safety and security measures (ph).

In your testimony you say and I quote "the NRC is taking a hard look at the proposed budget and is proposing reductions in both full-time equivalents and contract support dollars that represent real savings. As we continue our work through the Project Aim Initiative, we anticipate additional savings and efficiencies to come."

How would these additional savings translate in the reductions of the NRC fiscal year 2017 budget request of 992 million -- 992.3 million and 3,523 FTEs?

BURNS: Thank you for the question Senator and I do appreciate opportunity to be able to go visit Arkansas Nuclear One and Two soon. It's a plant I haven't been to as yet.

The answer to your question is that we have identified this is primarily through the rebaselining effort for Project Aim about \$31 million in additional savings and I think the low -- what we came in the President's budget part of that is, you know, the timing of the President's budget and the review process and the commission is about ready to issue its final guidance on these additional rebaselining items and I think they represent about \$31 million.

There are a few more and frankly the number stays now (ph) that we see that would go on into 2018. I forget it it's about -- it's about, thank you commissioner, it's about \$8 million in additional savings. So that's -- that's where I say the core of it is and I think it's a demonstration we've taken these efforts seriously.

BOOZMAN: How about Project Aim recommendations and workforce planning including check hiring controls, staff reduction, buyouts, how would that affect that?

BURNS: Yes. We -- The Office of Chief Human Capital, I used to call it HR and now it's OCHC (ph) so I get confused sometimes. Our HR Office basically has put hiring controls so in terms of external hires we're looking only very critical -- very critical positions, looking to be more flexible that's a strategic workforce planning about getting people with skill sets you might say working in a reactor area, go to the materials area and working with things like that.

We did do early out buyout last year. We were authorized up to about a hundred. We had about 50, 49, I think 49 taken (ph). We are in the process of going through the process of looking at or looking at or getting authorization for an additional effort that way, but that's in process so we would do that again to achieve some savings this year.

BOOZMAN: Thank you Mr. Chairman and Chairman Burns. Thank you. INHOFE: Thank you Senator Boozman. Senator Sessions had questions concerning Yucca Mountain and without objection I want you to ask him to submit to each one of you those questions and we would anticipate a response by the end of the week. OK.

Thank you very much for your patience and also getting us out on time. We're adjourned. Thank you.

END

**LOAD-DATE:** April 11, 2016