

Table of Contents

U.S. Senate	Date: Wednesday, April 15, 2015
Committee on Environment and Public Works	Washington, D.C.
STATEMENT OF:	PAGE:
THE HONORABLE JAMES INHOFE, A UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA	3
THE HONORABLE BARBARA BOXER, A UNITED STATES SENATOR FROM THE STATE OF CALIFORNIA	7
STEPHEN G. BURNS, CHAIRMAN, NUCLEAR REGULATORY COMMISSION	12
KRISTINE L. SVINICKI, COMMISSIONER, NUCLEAR REGULATORY COMMISSION	17
WILLIAM C. OSTENDORFF, COMMISSIONER, NUCLEAR REGULATORY COMMISSION	20
JEFF BARAN, COMMISSIONER, NUCLEAR REGULATORY COMMISSION	22

OVERSIGHT HEARING: THE PRESIDENT'S FISCAL YEAR 2016 BUDGET
REQUEST FOR THE NUCLEAR REGULATORY COMMISSION

WEDNESDAY, APRIL 15, 2015

U.S. SENATE

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:08 a.m. in room 406, Dirksen Senate Building, the Honorable James Inhofe [chairman of the committee] presiding.

Present: Senators Inhofe, Boxer, Barrasso, Capito, Crapo, Fischer, Sullivan, Carper, Gillibrand, and Markey.

STATEMENT OF THE HONORABLE JAMES INHOFE, A UNITED STATES SENATOR
FROM THE STATE OF OKLAHOMA

Senator Inhofe. The meeting will come to order.

We are holding this hearing to review the Nuclear Regulatory Commission's budget proposal for fiscal year 2016.

I would like to welcome Chairman Burns and the rest of you we have worked with in the past. It is nice to have you back. We are going to start getting active here.

We will continue with the committee's practice of five-minute opening statements from Chairman Burns and two minutes for each of the others. Then we will start our questions. It looks like we will have pretty good attendance.

The NRC's mission is a vital one and must be adequately funded. I want our nuclear plants to be safe and they are safe, in spite of some of the things you might hear to the contrary.

However, resources are not unlimited. As the size of our nuclear industry shrinks, the NRC must recognize that it can accomplish its mission with fewer resources. In fact, it has done so in the past.

I conducted my first oversight hearing as Chairman of the Nuclear Safety Subcommittee in 1998. In 1998, this Commission had gone four years without any oversight. We changed that and started having six month reports. You are all very familiar with that. We go back a long ways on this.

In my opening statement, I am going to mention some things that no one is going to understand what I am saying except you at the table. You are very familiar with that and if you pay attention, I have a little challenge afterwards.

In 1997, we had 104 reactors operating in the U.S. and the NRC executed its safety mission with a budget of \$477 million and 3,000 employees. Since then, we experienced the tragedy of September 11th and NRC expanded its efforts on security. A few years later, our Country seemed poised to experience a nuclear renaissance, which we were all very excited about, at least I was, and the NRC expanded to review a surge of applications for 31 new reactors.

Ten years ago, the NRC had a budget of \$669 million and 3,108 employees to oversee 104 reactors and review 1,500 licensing actions. For fiscal year 2016, the NRC is requesting a budget of \$1.032 billion and 3,754 employees to oversee 100 reactors and review 900 licensing actions.

After an increase of \$363 million and 646 employees, the NRC is struggling with a backlog to review 40 percent fewer licensing actions. In 2005, the NRC reviewed 16 license renewal applications. In 2016, it plans to review nine.

In 2005, the NRC budgeted \$69 million for preparing to review the Yucca Mountain application. We all remember that. For fiscal year 2016, the NRC has not requested any funding. In

2005, the NRC oversaw 4,400 nuclear materials licensees versus only 2,000 in 2016.

What we have seen over time is an agency that has grown in spite of a decreasing workload and now, unfortunately, a shrinking industry, something we hope to reverse and turn around.

These numbers tell us that the NRC has, in the past, accomplished more work with fewer resources. Last year, the Commission recognized the need to "right-size" the agency and instituted Project Aim 2020. Project Aim's recommendations include reducing the NRC's budget, and staffing levels 10 percent by 2020.

It is a nice start, but the NRC has performed far more efficiently in the past. I have seen the NRC accomplish more with less so I know it can do better. I do not think there is any reason to delay making changes to the agency's size and numbers until 2020. Certainly, the 2016 budget heads in the wrong direction.

Ninety percent of the NRC's budget is collected by fees recovered from its licensees. A lot of times that is used, saying these are not public dollars but it is the hardworking families who ultimately pay these costs in their electricity bills. They deserve prompt action to address the imbalances between your declining workload and the budget you have requested.

It is incumbent upon the NRC to ensure that these funds are used prudently and focused on achieving genuine safety benefits. I will have some specific questions to ask you along that line.

Senator Boxer?

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE BARBARA BOXER, A UNITED STATES SENATOR
FROM THE STATE OF CALIFORNIA

Senator Boxer. Thank you very much, Mr. Chairman.

I welcome everyone.

Today, EPW is holding a hearing on the budget request for the Nuclear Regulatory Commission and also oversight and some management issues.

When I was chairman, we held 11 oversight hearings which were very important and informative, although I do not think they led to the action that we really have needed post-Fukushima which I will talk about. I do believe, as a result of those oversight hearings, this Commission has a new face. I am grateful for that.

Among the management issues I wish to explore today are the slow pace at which the NRC is implementing measures intended to protect American nuclear plants in the wake of the earthquake, tsunami, and nuclear meltdowns in Japan in March 2011. The reason I think it is so critical is I believe if you want a future for nuclear power, you have to have confidence or people are not going to allow it. I see this happening in my State because people are very worried. I will get to that in a minute.

I want to know today, you have not done really anything since Fukushima as far as I can tell. We do not really see any of the recommendations that came out being completely taken care

of. I believe there were 12, were there not?

Senator Inhofe. I think we have 35.

Senator Boxer. Here are the ones, 12, that I am talking about. Maybe there were 35 but the top 12 here -- no, no, no, nothing has been done. I want to know today is it because you do not have enough money, you do not have agreement or what is the story there? I am going to ask you that question.

Let me talk about what has happened in Japan. Here are the facts. Tens of thousands of refugees still remain barred from their former homes. There remains no solution for how to dispose of the massive volumes of radioactive waste accumulating at the plant.

Recently, the chief of the Fukushima power plant admitted that the decommissioning process could take -- listen to this, Mr. Chairman -- 200 years and they had no idea what the conditions were inside the reactors because they are still too radioactive to examine. The technology needed to do the job does not even exist.

Just yesterday, a court in Japan sided with residents concerned about seismic safety when it prevented the restart of two Japanese reactors that have been shut down since the Fukushima disaster.

I believe the only way the nuclear industry can remain a vibrant part of our energy mix is if it has the confidence of the

public. I said that at the opening of my statement and I want to say it again.

We have to learn from Fukushima and do everything we can to avoid having something similar happen here. The sad reality, again, is that not one of these 12 safety recommendations made by your own task force has been implemented.

Some reactor operators are still not in compliance with the safety requirements that were in place before Fukushima. The NRC has only completed its own action on four of the twelve recommendations. You have completed your own action but the industry has not completed any.

I remain concerned that you are not living up to your mission which is "to ensure the safe use of radioactive materials for beneficial civilian purposes while protecting people and the environment." That is your charge.

If we look at California's Diablo Canyon Power Plant to see that the NRC has failed to live up to its mission. I would like to place in the record a news article that appeared in the San Francisco Chronicle on March 7, 2015, entitled: "PG&E overlooked key seismic test at Diablo Canyon nuclear plant."

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. Thank you.

While the Fukushima Task Force recommended that all reactors be protected against the strongest earthquakes they were likely to face, the NRC seems to have gone out of its way to do the exact opposite.

Even after learning of newly-discovered strong earthquake faults close to the power plant, the NRC dismissed its senior inspector's recommendation that the reactor be shut down if it did not come back into compliance with its own license, its own seismic licensing requirements. I am going to get into this as we get into the questions.

The fact is I represent a lot of people and a lot of people live around these plants. San Onofre had to shut down. NRC did not do what they should have done there and I am very fearful we are looking at the same thing in Diablo. I will question you on that.

Please let me know during your testimony whether you have enough money to do the job you are supposed to do or are you misusing it or using it on wrong things. I do not know. I need to hear, because this is a horrible record that after all these years, nothing of your own task force is happening on the ground now that you recommended -- that they recommended.

[The prepared statement of Senator Boxer follows:]

Senator Inhofe. Thank you, Senator Boxer.

Mr. Burns, this is the first time you have appeared before this committee as chairman. You are recognized.

STATEMENT OF STEPHEN G. BURNS, CHAIRMAN, NUCLEAR REGULATORY
COMMISSION

Chairman Burns. Thank you, Senator. Good morning, Chairman Inhofe, Ranking Member Boxer and distinguished member of the committee.

My colleagues and I appreciate the opportunity to appear before you today to discuss the NRC's fiscal year 2016 budget request and the agency's current activities.

The proposed budget for 2016 reflects the NRC's responsiveness to the environment in which we find ourselves. Continuing with trends that began in fiscal 2014, the 2016 request reflects a reduction in both dollars and full-time equivalent staff from budget proposals in recent years, but still will provide the necessary resources to carry out the agency's mission to protect the public health and safety, common defense and security.

The proposed fiscal 2015 fee rule, which was published just recently on March 23 for public comment, is also expected to reflect a reduction in operating reactor fees from the proposed rule.

Ensuring timely implementation of safety enhancements at nuclear power plants as a result of the lessons learned from the accident at the Fukushima Daiichi plant in Japan continues to be a priority for the agency and will be in fiscal 2016.

The NRC and the industry continue to make substantial progress in implementing safety enhancements and the primary focus throughout this effort is beyond the implementation of the highest priority, most safety significant enhancements to maximize the safety benefit at nuclear power plants.

The NRC expects that most licensees will complete implementation of the majority of the most safety significant enhancements by or before 2016. These include safety enhancements in the following areas: mitigation strategies, spent fuel pool instrumentation, flooding and seismic reevaluations and interim actions, enhancements to emergency preparedness communications and staffing.

Last year, the first plants completed implementation of the 2012 Mitigation Strategies Order which requires sites to be prepared to respond to beyond design basis events. More than half the plants are scheduled to achieve full implementation by the end of 2015 and the remaining, with limited exception, will complete the necessary actions in 2016.

Also, in the past year, both of the industry's National Response Centers in Phoenix, Arizona and Memphis, Tennessee became operational. Both centers contain multiple sets of emergency diesel generators, pumps, hoses and other backup equipment that can be delivered to any nuclear power plant in the United States within 24 hours.

From a broader perspective of NRC activities, we acknowledge that we are operating in a changing environment. Since 2001, the agency grew significantly to prepare for the projected growth in the use of nuclear power in the United States. That has not materialized, as Chairman Inhofe noted, to respond to the security aspects of the 9/11 terrorist attacks.

To address our changing environment, the agency launched Project Aim 2020 last summer to enhance the agency's ability to plan and execute its mission, while adapting in a timely and effective manner to a dynamic environment.

The NRC staff recommended to the Commission a number of measures designed to transform the agency over the next five years to improve our effectiveness, efficiency and agility. We are currently considering the staff recommendations as a commission and are taking a hard look at how to ensure the agency maintains the ability to perform its critical safety and security mission while being more efficient.

Although the NRC recognizes the need for change, we are also keenly aware that major organizational change, if not done wisely, can have a detrimental effect on the agency's mission and on the morale of its employees.

We have a critical mission and some of the most talented, dedicated and knowledgeable employees in the Federal Government. The Commission's priority must always be focused foremost on its

safety and security mission, but in doing so, the Commission is cognizant of its changing environment and is committed to taking a hard look at itself to ensure that it is prepared for its future.

On behalf of the Commission, I thank you again for the opportunity to appear before you today. I look forward to continuing to work with you to advance our important safety and security mission.

I would be pleased to respond to any questions you may have. Thank you.

[The prepared statement of Chairman Burns follows:]

Senator Inhofe. Thank you very much, Mr. Chairman.

Ms. Svinicki. Try to keep within our time limit if you would, please.

STATEMENT OF KRISTINE L. SVINICKI, COMMISSIONER, NUCLEAR
REGULATORY COMMISSION

Ms. Svinicki. Thank you, Chairman Inhofe, Ranking Member Boxer and distinguished members of the committee for the opportunity to appear before you today.

The Commission's Chairman, Stephen Burns, in his statement on behalf of the Commission has provided an overview of the agency's budget request as well as a description of some of the key agency accomplishments and challenges in carrying out the NRC's important work of protecting public health and safety and promoting the common defense and security of our Nation.

The NRC continues to implement safety significant lessons learned from the Fukushima accident in accordance with agency processes, while also maintaining our focus on ensuring the safe operation of nuclear facilities and the safe use of nuclear materials.

The current period of implementation of Fukushima-related Tier 1 regulatory actions will require focus from the NRC staff as they review and process an extremely high volume of regulatory submittals and inspect the implementation of these requirements at licensee sites.

At the same time, the agency will be carrying out a set of complex rulemaking activities. In short, demanding work continues before us.

Concurrent with this, the NRC is taking the initiative to improve agency budget formulation, budget implementation and program execution; in other words, an effort to sharpen our delivery of the basics.

This is truly a homegrown initiative involving the efforts and feedback of many hundreds of individual NRC employees who have demonstrated strong ownership of its core elements. These elements are: right-sizing the agency, streamlining agency processes to use resources more wisely, improving timeliness and decision-making and promoting a more unified agency purpose through agencywide priority setting.

We look forward to reflecting progress on these fronts in future budget submittals. I appreciate the opportunity to appear today and look forward to your questions. Thank you.

[The prepared statement of Ms. Svinicki follows:]

Senator Inhofe. Thank you, Ms. Svinicki.

Commissioner Ostendorff.

STATEMENT OF WILLIAM C. OSTENDORFF, COMMISSIONER, NUCLEAR
REGULATORY COMMISSION

Mr. Ostendorff. Good morning, Chairman Inhofe, Ranking Member Boxer and distinguished members of the committee.

The Chairman has already provided an overview of the NRC's budget, the changing environment and steps we are taking to improve the operations of the NRC through Project Aim. I am in complete alignment with his testimony.

Looking back over the actions the NRC has taken over the past four years as a result of Fukushima lessons learned, I firmly believe that the agency has acted on a foundational basis of solid science and engineering.

We have appropriately given highest priority to the Tier 1 items associated with the greatest safety significance. I am confident in the NRC's safety actions post-Fukushima and believe we have made very substantial progress.

In closing, I appreciate the opportunity to testify today and look forward to your questions.

Thank you.

[The prepared statement of Mr. Ostendorff follows:]

Senator Inhofe. Thank you, sir.

Commissioner Baran?

STATEMENT OF JEFF BARAN, COMMISSIONER, NUCLEAR REGULATORY
COMMISSION

Mr. Baran. Chairman Inhofe, Ranking Member Boxer and members of the committee, thank you for the opportunity to appear today before the committee.

It is a pleasure to be here with my colleagues to discuss NRC's fiscal year 2016 budget request and the work of the agency.

First and foremost, NRC is focused on our mission of protecting public health and safety, yet the agency faces a different environment than what was expected just a few years ago. To meet our responsibilities now and into the future, we need to enhance the efficiency, effectiveness and agility of the agency.

Before I joined the Commission, my colleagues had the foresight to initiate Project Aim, an internal working group tasked with looking at changes NRC should make to prepare for the future. This is a valuable and timely effort.

We are actively deliberating on the recommendations of the Project Aim team and I expect that the Commission will approve some prudent actions very soon.

While we work to increase the agency's efficiency and agility, we need to ensure that NRC also maintains its focus on its ongoing safety work. Currently, five new reactors are being built in the United States and five reactors recently ceased

operations and are entering decommissioning.

At the construction sites, NRC is conducting oversight to ensure that the new plants are built safely and in accordance with regulatory requirements. Meanwhile, the NRC staff is beginning a rulemaking to take a fresh look at a number of decommissioning issues.

NRC is continuing to address post-Fukushima safety enhancements and lessons learned. Progress has been made in several areas but we recognize that more work remains to be done.

The effort to address flooding hazards at nuclear power plants is a good example. The flooding hazard reevaluations have been proceeding more slowly than anticipated. The Commission recently decided to make some improvements to the process in order to accelerate the analysis while providing more clarity to licensees about the process for determining what additional equipment or modifications may be necessary to protect nuclear plants from floods.

In closing, I recognize that our congressional oversight committees are more interested than ever in NRC's mission and the way we are carrying out that mission. I firmly believe that NRC can provide Congress with the information it needs to perform its oversight duties while preserving the independence essential to accomplishing our safety and security mission.

Thank you and I look forward to your questions.

[The prepared statement of Mr. Baran follows:]

Senator Inhofe. Thank you very much.

I am going to make an observation and ask if each of you disagree. The notion that the NRC has done nothing in response to Fukushima just isn't true.

I understand the NRC has responded to congressional questions. I have seen the list. There have been as many as 35 post-Fukushima recommendations. The most safety significant of these either has been implemented already or will be implemented by the end of the year.

I understand the industry expects to spend approximately \$4 billion on post-Fukushima safety requirements. Clearly, we have been very busy.

I would also observe that Japan was not as prepared for an extreme event as our industry was. In fact, a Japanese government report, their report, noted that the equipment the NRC required, that is us, following September 11 might have made the difference at Fukushima. In addition, the NRC required our plants to add backup power and generators to cope with station blackouts starting in the 1980s.

Does anyone disagree with that? Thank you very much.

You heard my opening statement. I think I probably observed accurately that you four are the only ones who understood what I said because it is a bit complicated, but it is a history we have to look at because it is real.

According to Project Aim, the 2020 Report, the NRC's current staffing level is 3,677 full-time equivalent employees, excluding the Inspector General's Office. Your fiscal 2016 budget requests 3,691 full-time equivalent employees which is a slight increase.

Chairman Burns, if Project Aim recommends shrinking to a workforce of 3,400 why request an increase for 2016?

Chairman Burns. I don't think we are requesting an increase in the number of staff for 2016. I think, Mr. Chairman, the difference between our 2015 and 2016 proposal is this. In 2015, the appropriated amount was smaller than our request for 2016, but in 2015, because we had a substantial carryover, the Congress allowed us -- I think it is on the order of \$38 million to \$40 million in carryover.

Our overall request for 2016, if you compare it to that appropriated amount and that carryover amount, is smaller for 2016. We are looking at, I think, a reduction in 2016 of about 140 full-time equivalent positions.

Senator Inhofe. I notice you are glancing at this chart. You know what this chart is. Do you agree with it?

Chairman Burns. Unfortunately, I can't. It is hard for me to read, my eyes aren't the best.

Senator Inhofe. Staff, point out the surge that takes place about the fourth column over to the right. What year is that because I can't see that either -- 2002, is it? Yes. Anyway, I

want you to look at that and we should have had that in front of you because I think this is accurate in terms of its content.

I understand what you are saying. If we do find that it is excessive, I want you to reevaluate that.

According to the NRC's annual attrition rate of 5 percent, this is what I understand it is, the NRC could reach the Project Aim recommended staff level in fiscal year 2017 if it began with the 2016 budget. I would ask the same thing of Chairman Burns, why would it take to 2020 to achieve that reduction?

Chairman Burns. Senator, I think part of the answer is that in looking at Aim, they were looking out to 2020 in terms of where they thought a potential staffing level would be. I think we want to be careful because we want to be responsible in terms of what it is we think we need in order to meet our objectives.

I would be hesitant to say just flat out that in the 2017 time frame or 2018, before that, that is where we ought to be. There is work we need to do. We need to bring the Fukushima improvements home. We have some new reactor licensing.

Senator Inhofe. You are doing a lot of that now.

Chairman Burns. Yes, we are doing that now but there is work that carries through 2016 to 2017 in a number of areas. Again, I think given what we understand now, that is where I think the line or the slope is we would have.

Senator Inhofe. How about the other three of you? Do you

think it is unreasonable for us to expect and to go back and have something at the level of 2000 if we are using that to measure the number, the workload, and number of employees in the budget? Do any of you disagree with that, that you ought to be able to do what we did with the same thing in 2000?

Ms. Svinicki. I would just remark that the goal laid out for Project Aim was merely a staff estimate for a reduction. The Commission, itself, is right now reviewing the work that needs to be done and the staffing level. The Commission does not endorse that.

It may be that it is too modest or too ambitious but we have not yet looked at the work scope to support the staffing but I think there is general acknowledgement that the staffing will be coming down.

Senator Inhofe. Okay.

Yes?

Mr. Ostendorff. Senator, I would just comment and add that I do believe taking a historical look at prior budget and staffing numbers does provide a perspective that should inform how we move forward.

Senator Inhofe. My time has expired but if we do have a second round, I want to get into the IG report. I think you are familiar with that and I have some questions along that line.

Senator Boxer?

Senator Boxer. Thank you.

I want to go back to the list of 12. The point is we were told by the former Chairman that a lot of these recommendations would be required to be implemented within 90 days of Fukushima. That is in the record.

You don't have to agree with it. I am not asking about that but the fact is we don't have any required implementation by the Commission for anything until 2016. My question to all of you is, do you intend to extend that or are you going to stick with the ones where you say you will have 2016 action? Is there any intent to extend that period to the industry?

Chairman Burns. Senator, when I came on as chairman, one of my priorities is to see these things home. What you have in terms of 2016 is the schedule for implementation that I believe the Commission, actually, it would have been when I was general counsel, adopted in terms of the implementation.

Senator Boxer. Just answer the question, do you plan?

Chairman Burns. I do not plan, based on what I know now in terms of the progress made, to do that. As I said, there are a few instances, to be sure we are clear and honest with each other.

Senator Boxer. Okay, fine. The answer is that you don't intend to.

Chairman Burns. I don't intend to do that.

Senator Boxer. Also, since you have taken no action on several of these, there were only 12, let us be clear, from the Commission. There were 12 recommendations. I am going to ask you to put in writing, all of you, I am going to follow up, why you have not acted on some of these and what your intentions are. We will get that letter to you.

I want to hone in on a shocking situation at home. I am asking all of you to comment on this. I will start with Ms. Svinicki.

On September 10, PG&E submitted a seismic safety report on Diablo Canyon, which it was required to do, by the State of California and the NRC. That report found that the shoreline seismic fault was more than twice as long as previously believed. On September 10, they submitted this report.

What we have found out, with some diligent work by my staff, is that the NRC's press office circulated internally a memo on August 24, 27 and 28, all containing talking points saying the NRC has reviewed the report and concluded Diablo Canyon was seismically safe.

Let me say that again for the committee here. You do not get the report until September 10, actually, you got it on September 8, but in August, your communications people put out an internal memo stating that everything was cool and it was seismically safe when we know it is not true.

I would like to ask each of you to respond to this. Did you know about this? Now that you know about this, will you investigate why this happened?

Ms. Svinicki. I did not know about this and I believe this may already be under investigation.

Senator Boxer. Yes?

Mr. Ostendorff. I agree with Commissioner Svinicki's answer. I did not know about it.

Senator Boxer. Do you know if it is under investigation, Mr. Burns?

Chairman Burns. I do not. If this happened, this occurred actually before I was confirmed.

Senator Boxer. I understand that, so this is the first you have heard, but Ms. Svinicki, since you said it is under investigation, who is investigating it?

Ms. Svinicki. I believe it would be the Office of the Inspector General, but Senator, I am not entirely sure.

Senator Boxer. My understanding is it is not under investigation and this has to be done. I am asking you, Mr. Chairman, if you will get back to me on this? This is appalling. It is about my people surviving if there is an earthquake right there. Will you look into this? Heads should roll on this. You do not writing talking points before you even get the document.

Chairman Burns. I will look into it and get back to you.

Senator Boxer. I need it in writing as well.

This morning, I reintroduced my legislation to prevent exemptions from having to prepare emergency responses when there is decommissioning going on. We have examined this.

NRC has never once rejected such a request even though the studies have found that the health consequences a spent fuel accident could be as bad as the consequences of a severe accident.

I want to know from you whether you are now taking a look at these kinds of automatic exemptions for the plants. Are you taking another look at that?

Chairman Burns. The Commission has directed initiation of a rulemaking on decommissioning which would look at the process for entering into decommissioning which would include a look at the exemption process in terms of trying to develop a more transparent and regulatory framework as we go forward.

Senator Boxer. I hope that means you are not going to automatically grant these exemptions because I have to tell you something. If something happens to somebody and they are hurt in a terrible nuclear accident because of what leaked out of the plant, it does not matter to them if it happened before the decommissioning or after. We need to not just grant these exemptions.

Thank you very much, Mr. Chairman.

Senator Inhofe. Thank you, Senator Boxer.

Senator Fischer?

Senator Fischer. Thank you, Mr. Chairman.

I have a chart to put up. This was compiled by the Nuclear Energy Institute and it represents all the scheduled initiatives that at the Commission. Mr. Chairman, I have raised concerns about the impacts of regulation before and I think this chart illustrates those concerns really well.

It also shows all the scheduled regulatory initiatives at the NRC, including the progress of the post-Fukushima Tier 1 recommendations about which Ranking Member Boxer expressed concern as well.

We see a lot of new nuclear regulatory requirements, in addition to our expectation that plants are operated at the highest levels of safety every single day. This is an issue that the NRC has been considering since 2009 and one that the NRC staff agrees "can potentially distract licensee or entity staff from executing other primary duties that ensure safety or security."

As you know, Senator Vitter and Congressman Upton asked the GAO to review NRC's cost estimating. The GAO found that NRC's cost estimating procedures "do not adequately support the creation of reliable cost estimates."

The NRC appears to have dismissed the recommendation to use

GAO's cost estimating guide in favor of OMB's, which I think is far less detailed.

Considering the NRC's pattern of under estimating costs, sometimes by more than 1,000 percent, do you think it is wise to reject the GAO's guidance?

Chairman Burns. My understanding, with respect to our views or the agency's views on the GAO's guidance, is that the particular GAO guidance was designed for basically, I think project construction and things like that, which are not quite a match for what we do.

Having said that, this is an area in which the agency has focused attention. We are taking steps to try to make sure we are better with cost benefit analysis in the areas where it is applied. I think we have reached out to the industry here to make sure we have a better understanding of costs because I think this is an area in which we can do better.

While I disagree in terms of the issue on the GAO, I think we are ready and I think we have been trying to take some steps that address some of the concerns.

Senator Fischer. When you look at the new regulations, again, you tend to under estimate the cost. The Energy Institute would say that the actual cost, for example, to implement worker fatigue rules were two to five times your estimate. The new fire protection regulations were six times your estimate. The new

security requirements were 19 times your estimate.

How do you respond to that?

Chairman Burns. Again, I think we have to make sure our processes -- we have looked at the input we get from the industry on those questions and hopefully feed it back into the rulemaking process.

This is an area where we have committed, both in the cost benefit area and the cumulative effects area, to do more work. We have engaged with the industry on that to move forward.

Senator Fischer. Thank you.

Commissioner Ostendorff, in recent hearings of the committee, I have asked questions about the use of qualitative factors in the decision-making of your commission. It is my understanding that in a vote on March 4, 2015, you disapproved of the expansion of the NRC staff's use of those qualitative factors beyond the current context in which these factors are considered.

I would like you to describe, first, the current role that qualitative factors play in the staff's decision-making process. Second, I would like your views on the appropriate role for the use of qualitative factors going forward and perhaps limitations on them.

Mr. Ostendorff. Thank you for the question, Senator Fischer.

Very briefly, I think whenever there is an opportunity and

the ability to use quantitative factors, we must use those factors. There are some areas where there is not an easily quantifiable approach to look at the problem. In those cases, and they are limited in number and scope, there are times when the Commission needs to be aware of how our staff might look at this non-quantitatively but through qualitative factors. At the end of the day, the decision on whether or not that approach would be based upon a qualitative approach rests with this Commission.

Senator Fischer. Thank you, sir.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Fischer.

Senator Capito?

Senator Capito. Thank you, Mr. Chairman. I would like to thank the panel as well.

I want to follow up on Senator Fischer's line of questioning in terms of the use of qualitative factors.

As she mentioned and you also mentioned to Mr. Ostendorff, the use of qualitative factors is limited historically only to those situations where the cost benefits cannot be amenable to quantification.

The Commission recently issued direction to the staff regarding the use of qualitative factors in regulatory and backfit analysis stating, "This approval does not authorize an

expansion of the consideration of qualitative factors in regulatory analysis and backfit analysis."

Your direction also listed the principles that you expect the staff to follow: one, improving its methods for quantitative analysis; two, developing realistic cost estimates; three, limiting the use of, as you said, qualitative factors to certain areas; and improving transparency of decision-making in the use of qualitative factors.

I guess I would ask the Chairman, are these instructions largely reinforcing the existing practice, in your mind?

Chairman Burns. I think so. From that standpoint, again, I think the direction was the staff should continue under the direction it has had and that is the preference, if we have the ability to use quantitative information to make those judgments, that is what we ought to be doing.

I would defer to my other colleagues if they want to add anything.

Senator Capito. Who actually oversees the decision, making sure that the staff goes with the instructions that the quantitative instructions are largely in place over qualitative? Is that a decision you make?

Chairman Burns. Certainly the Commission has a role in that, but the Commission having given direction, we would expect our Executive Director for Operations, our chief staff officer,

to ensure the Commission's will is carried out through the staff.

Mr. Ostendorff. I want to add to the Chairman's comment.

Senator Capito. Yes?

Mr. Ostendorff. When a paper comes to the Commission for a decision on a policy matter, we expect, and I think it has been the practice, that the regulatory approach, the regulatory analysis the staff is using is clearly presented to the Commission so we have the ability to see what their thinking is.

Senator Capito. And how they arrived at the decisions?

Mr. Ostendorff. Exactly.

Senator Capito. That is a part.

Mr. Ostendorff. A part of our process.

Senator Capito. Part of the process.

Whoever wants to answer this question, my question would be if qualitative analysis could be used to justify a regulatory change that failed a quantitative cost benefit analysis, could that open the door for the NRC to justify basically any regulatory change? Would you agree with that statement?

Ms. Svinicki. I think one of the reasons that we deliberated and issued the instruction or direction on use of qualitative factors you have been quoting from was just that concern, that an unlimited, unfettered use of soft or qualitative factors could be used to obscure the true cost benefit of a new regulation and therefore, we had these elements of maybe

constraining, continuing many practices of the use of qualitative factors but making more explicit the identification of how that was part of the analysis so that we can have clarity in our evaluation of any recommendations from our staff.

It is, I think, in some ways, to be certain that we don't venture near those types of abuses.

Senator Capito. Any other comments?

Chairman Burns. I think Commissioner Svinicki submitted a good synopsis.

Senator Capito. Thank you, Mr. Chairman.

Senator Inhofe. Thank you.

Senator Sullivan?

Senator Sullivan. Thank you, Mr. Chairman.

Mr. Chairman, it is good to see you. Thanks for the work that you do.

In Alaska, we don't have any nuclear facilities, so this is my first hearing with regard to the NRC. I always start the hearings by looking at the mission, what you do, the mandate from Congress and the fact that you are an independent agency.

Mr. Chairman, would you like to comment, just from your perspective around the agency, what you think it means to be an independent federal agency in Washington right now? I think sometimes people forget that word "independent" and what it means and how important it is.

Chairman Burns. Thank you for the question. In my prior work at the OECD Nuclear Energy Agency that was often a question and debate, not a debate but discussion as well.

I think to me, again, independent agencies were set up in a way to be bipartisan but in the sense that the expert judgment that an agency can bring to bear, that basically the agencies are created to bring to bear expert judgments in the areas of their competence. I think maybe that is the hallmark.

There are probably other characteristics but certainly how they are structured in terms of, in our case, no more than three members can be from the same political party or registered from the same political party, and the openness in terms of meetings. Things like that, I think, enhance our independence.

Senator Sullivan. With oversight from the Congress?

Chairman Burns. With oversight from the Congress, absolutely.

Senator Sullivan. With policy direction ultimately from the Congress in the form of legislation?

Chairman Burns. Yes.

Senator Sullivan. Not the White House or the Executive branch?

Chairman Burns. No. That is another aspect. Our appointments are for terms and removal can only be -- except the Chairman can be replaced on a day to day basis. Sometimes maybe

that would be good from my standpoint but the idea is, again, commissioners basically serve that term unless removed for malfeasance.

Senator Sullivan. I want to talk just a little bit about the budget. From 2004 to 2014, your budget increased by more than \$400 million, 800 more staff and yet the NRC struggled to review 40 percent fewer licensing actions in 2014 compared to 2004.

In particular, as you know, 90 percent of the budget to the NRC comes from fees paid either for license fee specific work or annual fees billed to operating reactors. With the Office of New Reactors having less work, it appears -- I would like you or any of the other commissioners to address this -- and with the shutdown of two reactors, the remaining reactors are going to make up a shortfall in terms of an additional \$100 million paid this year. Is that correct?

How will the Commission avoid forcing current power reactors to pick up additional shortfalls in new reactor revenue in this year's budget and in the next if there is going to be additional closure of facilities?

To get to a broader point, do you think that is a sustainable model because it does seem that the annual fees required of the existing operating fleet become more and more and more. It seems to me that is a pretty significant burden and a

model that might not be sustainable.

Chairman Burns. I think the model is sustainable in terms of looking at the size of the current fleet. That is plus or minus some when I say that. At one point during the agency's history, we were not a fee-based agency, I think up through the mid-1980s.

Again, it is true and that is how the fee provisions work. It depends on the number of operating reactors. That is currently 99. The expectation, depending on the final outcome of the reviews of Watts Bar II, I think the estimate is it would go into operation later this year. That would be back to 100. There is, I agree, some variability there.

The overall, given our request, is that the fees will go down, are estimated to go down not only for fiscal 2015 but if you look at this budget proposal, in 2016 as well.

Senator Sullivan. Thank you, Mr. Chairman.

Senator Inhofe. Senator Gillibrand?

Senator Gillibrand. Thank you, Mr. Chairman. Thank you, Ranking Member Boxer.

I am grateful that the NRC Commissioners are here to testify about the work of the Nuclear Regulatory Commission.

The safety of our nuclear power sector is of great importance to me and New Yorkers. Our State has four nuclear power plants. I am very focused on making sure that the NRC can

provide the strong and consistent oversight to ensure those plants operate safely and that the lessons learned from previous tragedies are implemented.

We discussed this in past but Super Storm Sandy wreaked havoc throughout the New York City region, including Westchester. One of the challenges during Super Storm Sandy beyond the 10-foot surges was the amount of downed power lines and trees, particularly throughout the Westchester region and the Hudson Valley coming out of New York City.

I want a fuller discussion of an evacuation plan if you have the perfect storm, if you have a nuclear incident. I don't think you have ever submitted an evacuation plan beyond ten miles. The reality is that Indian Point has a very close proximity to 8 million people.

Could you speak to whether you have assessed a broader evacuation plan and if not, why not and if not, will you please submit it in writing? Anyone can answer.

Chairman Burns. I will start and my colleagues may want to add something.

Again, the emergency planning basis that the agency adopted, the basic rulemaking provisions, address detailed planning, not just evacuation but other types of potential responses within a 10-mile radius and then going out to 50 miles for what are called ingestion pathway zones.

That has generally been considered by our staff, our information and from working with other federal partners to be a consistent and also adequate basis for planning.

I think long term, we have always been open to potentially looking at that issue. I think parts of the Tier 3 Fukushima review may address it and see if there is anything else we can learn to address that. I will leave it there if any of my colleagues want to add something.

Mr. Ostendorff. I would just add, Senator, that NRC does this in concert with FEMA and FEMA has the broader national response authority to ensure coherency and commonality of approaches. I wanted to assure you that it is not just the NRC looking at the evacuation plans; it is also FEMA through their broad national responsibilities.

Senator Gillibrand. How many other nuclear plants around the Nation are within a 50-mile radius of a population of 8 million?

Mr. Ostendorff. Senator, I think it is very clear that Indian Point -- two of my three adult kids live within that radius.

Senator Gillibrand. I just think it is inconsistent with other evacuation plans and doesn't have the same needs because it happens to be positioned far differently than the typical nuclear power plant.

For example, the other power plants in New York State are in rural areas where you have significant ability to evacuate anyone within a 50-mile radius. You do not have that in New York City. You have an enormous population with very few avenues to evacuate.

I think it is a really complex problem that needs unique attention. I do not think saying it is consistent with the rest of the Country is correct because there is no other fact pattern that is similar to where Indian Point is.

I would like a unique approach to absolutely be planned for and analyzed to know what the limitations are and to think it through.

Mr. Ostendorff. Senator, with that question for the record, may we have the chance to get back to you in writing?

Senator Gillibrand. I would really appreciate that because I have raised it several times. I would like you to do a specific, specialized plan for Indian Point evacuation beyond the ten mile radius that you have done because Super Storm Sandy truly is a wake-up call. With global climate change as it is, rising sea levels, rising sea temperatures, more intense storms have higher storm surges, have more rain, flooding is absolutely possible.

The location of Indian Point geographically is problematic because it is on the Hudson Valley. It is poised just north of

New York City. It is very close to coastal areas. We also have seismic activity in that region. You do have real geographical issues beyond the massive population base.

I would like a thoughtful analysis about what you would do in the worst case scenario given Fukushima. That was the worst case scenario, one that nobody had planned for, no one could have imagined, and it was, as a consequence, deadly.

Please do that analysis and provide it to me.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator.

Senator Barrasso?

Senator Barrasso. Thank you very much, Mr. Chairman.

Chairman Burns, thank you and I appreciate your being here today.

I have some concerns about the NRC's proposed changes to the fee recovery rule. I want to follow up a bit what Senator Sullivan talked about.

This is the rule where the NRC charges fees to the licensees to recover most of its budgetary authority. A quote from the Federal Register back in 2005 talks about the comments objecting to the large increase in the annual fees for uranium recovery licensees. The commenters stated, "There continues to be a lack of reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived

from these services."

Additionally, the commenters stated, "The NRC needs to address the issue of decreasing numbers of uranium recovery licenses. Specifically as more States become agreement States and/or additional sites are decommissioned, the number of NRC-regulated sites continues to decline leaving fewer licensees to pay a larger share of the NRC's regulatory cost." That was ten years ago. It continues.

It seems you are overseeing about half the operations facilities that you did in 2005, and reviewing less than half the number of applications reviewed as recently as 2008. NRC's press release on the proposed rule on March 23, a couple weeks ago, stated "Most uranium recovery licensees would see an increase in their fees."

With each State that becomes an agreement State, the workload dropped for the NRC but the fees go up anyway. It could take up to five years for Wyoming to become an agreement State, a process you have noted in your written testimony.

My State has just started. In the meantime, our uranium operators are seeing their fees go up, even though the workload is going down. I had a letter two months ago talking about an invoice they recently received. The invoice was roughly four times the amount their staff had accrued based on their estimate of the level of effort the NRC staff is expending on or behalf of

the biweekly validation reports.

You can imagine my surprise and concern with this variance but surprise and concern have become routine with the quarterly NRC invoices emblematic of a lack of fiscal accountability at NRC.

Given the workload is down, how do you continue to explain the dramatic increases in fees? Is this practice sustainable?

Chairman Burns. Senator, I have not had a chance to see some of your details but again, this goes to the comments I made in the discussion with Senator Sullivan. In some areas where you have fewer licensees, that does have an impact on the fees.

I think what we can do and try to commit to do, as part of this, is say the fee rule is out for comment and our deliberation and determination assure that we have done our best in terms of equitably reaching a decision on the final rule, taking onboard the expressed concerns. That is what I can tell you I intend to do.

Senator Barrasso. I appreciate that.

Regarding the time it takes for the NRC to provide services to licensees, how long do you believe it should take the NRC to review an application for a new uranium recovery facility? Do you know how long it actually takes now?

Chairman Burns. I am not sure I can give sort of an ideal time. I haven't had a chance to look at that. I had a meeting

with Senator Fischer yesterday and I know her concern in terms of the length of time it took for renewal of the Crow Butte license.

Quite honestly, in the uranium recovery area, some of the complications are the ancillary reviews that have to be done. I think this is an area I am willing to look at and see we are trying to do better.

Senator Barrasso. My final question is, I am concerned that the EPA is currently taking jurisdiction away from the NRC with its proposed and costly Part 192 rulemaking that would essentially require uranium producers to monitor water quality for up to 30 years after the mine stops producing uranium.

I wondered if your Office of General Counsel has evaluated the jurisdictional aspects of this proposed EPA Part 192 rulemaking and what was that evaluation?

Chairman Burns. I would have to discuss that with the General Counsel. I would be happy to get back to you on that.

I do know from past experience, there is some jurisdictional overlap with the EPA. Unfortunately, I cannot tell you today with respect to the new rule.

Senator Barrasso. I would appreciate it if you would have this evaluated and report the findings back to this committee.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Barrasso.

Senator Markey?

Senator Markey. Thank you, Mr. Chairman.

In May of 2011, I released a report, Fukushima Fallout. This report pointed out the problems with American nuclear power plants in the wake of what we have learned about the Fukushima accident.

It talked about how we rely upon outdated seismic information and how our plants might be unprotected. It said that power outages in our Country could lead to Fukushima-style meltdowns or accidents right here in the United States of America.

In July 2011, two months after my report came out, the NRC's expert task force released 12 recommendations that all addressed weaknesses here in this Country, including the ones that I raised in my report.

As we sit here today, not one single new permitted, seismic safety upgrade has been required to be put in place. Not a single new measure to prevent floods from causing a meltdown to occur has been put in place. Not a single new emergency response procedure has been put in place. That is unacceptable.

The problems were identified in my report in 2011. The advisory committee, the NRC's own expert panel, identified these same problems. It is continually impossible for me to understand why the NRC does not act on this area, why we haven't implemented the lessons that we should have already learned from

the Fukushima accident.

It is time for the United States to act as though we understand that nuclear power here has to learn from the nuclear power mistakes of other countries. I do not think we have done that up until this moment.

On the issue of cyber security, after the terrorist attacks of 9/11, the NRC issued cyber security orders for nuclear reactors which later turned into even more robust regulations but the NRC did not require the same stringent cyber security measures for other nuclear facilities like centrifuge facilities that enrich uranium.

Now we know that the United States and Israel used the Stuxnet computer virus to damage Iran's centrifuges and slow down its nuclear weapons program. I am sure that is part of the reason why the NRC staff recommended that the NRC quickly issue orders to upgrade the cyber security requirements at American enrichment facilities and then do a rulemaking just like the NRC did for its reactors. What is mystifying though is why the NRC voted three to one to reject the staff's recommendations.

Commissioner Baran, you were the only one to support the NRC staff's recommendation. Can you tell us why?

Commissioner Baran. Sure, Senator. The NRC staff spent years looking at this issue. They did site visits at our fuel cycle facilities. They talked with licensees for a period of two

or three years largely trying to reach agreement on voluntary actions that the fuel cycle facilities would take to establish basic cyber security standards.

After all that effort, their conclusion was that there were significant vulnerabilities that needed to be addressed in order to protect the health and safety. I agreed with the staff that NRC should issue orders and then follow with a rulemaking so that we do not have years where we are waiting to have basic cyber security protections in place that are enforceable.

Senator Markey. I agree with you, Commissioner Baran.

NRC is still refusing to comply with my document request that could be related to the indictment of five members of the Chinese military on charges of hacking into U.S. company systems in 2010 and 2011 and stealing nuclear reactor trade secrets from Westinghouse.

At the very same time these thefts occurred, Westinghouse was hosting dozens of unescorted Chinese personnel at U.S. nuclear reactors for months. The NRC has refused to provide me with any documents I have requested even though Congress is about to be asked to approve a new nuclear cooperation agreement with China.

Anonymous sources have sent me some materials. For example, in November 2010, NRC's Security Office recommended that additional information about each Chinese

national be provided in advance of the visits so they could be checked against other security databases but the NRC ultimately rejected this recommendation and they did end up gaining unescorted access to nuclear reactors in this Country according to documents that were sent to me.

The law I wrote requires the NRC to provide non-public documents to Congress. It is vitally important that Congress be fully informed about the potential risk of Chinese cyber espionage before it approves a new nuclear cooperation agreement with China.

Do each of you agree to follow the law and fully respond to all of my outstanding document requests, yes or no? Mr. Chairman?

Chairman Burns. Mr. Markey, the prior Commission, when I understand these requests were made, we indicated we would meet with your staff and discuss the matter with respect to the documents and the issues with respect to it. That offer still stands.

Senator Markey. Yes or no, will you provide the documents?

Chairman Burns. We offered to meet with your staff to discuss the matter. That is my answer.

Senator Markey. No one has offered that. No one has provided that.

Senator Inhofe. Senator Markey, let me interrupt for just a

moment. We are going to have a second or third three-minute round. Do you want to take yours right now? You are already two minutes into it. I would be glad to give you that time.

Senator Markey. I thank you, Mr. Chairman, very much. Yes, I will just take that time right now.

The other commissioners, do you believe that you should follow the law and fully respond to all of my outstanding document requests? Commissioner Baran?

Commissioner Baran. Obviously, we should follow the law. My view is when NRC gets a document request from a member of one of our congressional oversight committees, we should review the documents that would be responsive and we should work with you or whoever the requester is to provide as much information as we can.

Senator Markey. The other two commissioners, do you agree?

Mr. Ostendorff. Senator Markey, I agree with Chairman Burns' response.

Ms. Svinicki. I agree with Chairman Burns' response.

Senator Markey. Okay. Let me just tell you this. We are about to be asked as a Congress to approve a new nuclear cooperation agreement with China. This committee has a right to have access to this information. We are the committee of jurisdiction overseeing the Nuclear Regulatory Commission.

There is a huge issue with regard to China and the security

of our nuclear secrets that is in question. There are outstanding questions going to the Nuclear Regulatory Commission that have not been responded to.

I believe it is irresponsible for that information not to be provided to this committee so that we can evaluate before we are asked to vote on a new Chinese nuclear agreement.

I thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Markey.

Senator Carper, you are recognized for a five-minute round and you have a remaining three minute-round.

Senator Carper. Thank you.

Hello, everyone. It is nice to see all of you and welcome a bunch of you back and to see others for the first time.

In the last decade, I think we have seen a huge swing in the marketplace, as you know, for nuclear energy. I think in 2008, we had 26 applications for building plants and now we are trying to build four.

Both of you, Chairman Burns and Ms. Svinicki, I think were at the NRC in 2008 during that time. As you know, there was very high employee morale. In fact, you topped the charts year after year, the NRC, best and brightest people wanted to come to work at the NRC. We also saw a jump in interest in the career engineering programs at our colleges and universities across the Country.

Things are different today. How do we ensure that the best and brightest still want to come to work at the Nuclear Regulatory Commission and stay there? How can we ensure that the U.S. still produces the best nuclear engineers in the world? How does our budget, the President's budget presented to us address those issues?

Chairman Burns. Thank you for the question.

It is probably easier in an environment where there is a lot of growth to really pump up morale. But my message to employees is, there is a lot of important work that this agency does. It is not only in regulation of the operating reactor fleet. There is new reactor work. It is doing things like learning the lessons from Fukushima and implementing those requirements.

Also, in the area of medical, we had a great meeting earlier this week from our advisory committee on medical isotopes. There is important work there understanding the beneficial uses of radioactive material and ensuring those uses are safe. Communicating that message, for us at the top, I think doing that helps a lot.

Ms. Svinicki. I appreciate the question as well.

My understanding from our human resource specialists is that our recruitment is still very vibrant, that young people entering the field are still very interested in applying for positions at the Nuclear Regulatory Commission.

I think they are motivated and excited by the mission of the agency and the opportunity to do exciting work.

Although you didn't ask, as I reflect, this December I will have been a federal employee for 25 years. I think I have more concerns that young people will perhaps not be interested in Federal Government, civil service or public service positions.

I know to a person, all members of our Commission go out and meet with young people and with students to try to tell them that careers in government and public service are still exciting and gratifying.

I do sense from some of the young people that they take a lot of the negative perception of Washington or public service. I personally think a lot of us advocate for the excitement of these careers.

Senator Carper. Good. One of the greatest sources of joy I think in the lives of most people is if what they are doing in life is worthwhile and the idea that we have an obligation to serve and if we do, we find that we are making the person being served feel better and it sort of comes around to make us feel a lot better about our own lives as well.

Thank you all for being servants. For those from Delaware who are listening, thank you for letting me serve you.

Chairman Burns, you have a fairly long history at the NRC, as we know. I think you mentioned in your testimony some of the

excitement that was going on a few years ago in terms of a lot of activity and a lot of projects on the horizon.

The NRC has to be flexible and the budget has to be flexible when the demand is up and a lot going on and maybe less when there is only four projects to be overseen, plus another 100 nuclear power plants.

How does this budget allow the NRC to be flexible to meet unexpected challenges? What challenges do you believe will be the toughest for the NRC to tackle during your chairmanship?

Chairman Burns. I would mention three areas. One, it allows us to bring what we see as significant Fukushima enhancements home. It gets us there. It gets us, if not to the very end, very close to the end path. I think that is important.

The second thing is it helps us work off things like the licensing backlog that happened due to our focus on Fukushima.

I think the third thing is that we do position ourselves for the potential for either small modular reactors or advanced reactors. There is money in there to help position ourselves for doing it.

All that said, it continues our vital inspection and oversight mission which is key to maintaining the safety of both reactor and materials use in the U.S.

Senator Carper. Thank you.

Mr. Chairman, thank you for letting me jump in like this.

We have the Commissioner of the IRS before our Homeland Security Committee today on April 15, very timely. I have been trying to adjust the hearing to come here and spend some time with you. It is great to see you all.

Thank you so much.

Senator Inhofe. In light of that, thank you for showing up.

Senator Carper. You bet.

Senator Inhofe. Let me make a couple comments. First of all, as you can tell, you knew this in advance, we have different approaches and ideas of where in the mix nuclear should be. You know that I am a very, very strong proponent and feel that we need to catch up with some of the other countries that are able to provide a lot more energy from this source. I am going to be working in that direction.

There was a report by the IG on the management directive for budget formulation that had not been amended since 1990 and was "thoroughly out of date." In particular, the IG observed that "lack of written policies and procedures that clarify the roles and responsibilities of key participants in the budget formulation process result in inefficiencies, particularly work flow disruption, confusion and rework."

Commissioner Svinicki, I know that you have worked to develop an update to that management directive I think going all the way back to 2008. I would like to know where we are on that

and what your feeling is on going forward with something like that?

Ms. Svinicki. Thank you, Chairman Inhofe.

This is Management Directive 4.7 within the Nuclear Regulatory Commission and it is a long, outstanding Inspector General finding that this management directive is not reflective of current processes that does lead to inefficiencies. Back in 2008, then-Chairman Klein asked me to convene a group of staff to look at updating that directive.

I offer no excuse for the fact that in 2015, that directive is still not updated. As often happens in large organizations, we continue to make tweaks and changes to the process. When we sat down to put pen to paper and update the directive for the process, we say we have some additional changes on the horizon so we fall victim to this notion of putting off the update until all the changes are in place.

Our new Chief Financial Officer has taken this on as something that has been outstanding for too long. I have met with her on it and I know that the Office of Chief Financial Officer is very committed to updating this directive.

Senator Inhofe. Do you have any idea about how long that will take? The criticism the IG had way back in 2005 -- you have been working on this now for a long period of time -- do you have any idea when we might be able to come forward with something

that we can start using?

Ms. Svinicki. I am not certain of the current estimate. Could I provide that for the record?

Senator Inhofe. Let us do that. How about you, Mr. Chairman?

Chairman Burns. Our CFO passed me a note that basically says the document is complete. They are awaiting completion of the related strategic plan management directive and expect to submit it to the Commission soon.

Senator Inhofe. For the record, all four of you are in support of the change that will be coming forward. That is fine.

Senator Boxer, we agreed we would have an additional three minutes. You are recognized.

Senator Boxer. Thank you.

Do you remember, each of you, that you answered the following question with a yes in a very important way? This is the question I am going to ask if each of you remembers you said yes to it.

Do you agree to ensure that testimony, briefings, documents, electronic and other forms of communication are provided to this committee and its staff and other appropriate committees in a timely manner? Do you remember saying yes to that?

Ms. Svinicki. Yes, I do.

Senator Boxer. Do you, sir?

Mr. Ostendorff. Yes, I do.

Senator Boxer. Do you, sir?

Chairman Burns. Yes.

Senator Boxer. Do you, sir?

Mr. Baran. Yes.

Senator Boxer. Well, it is not happening and it is awful. You say yes and then you don't come across with the materials. People are waiting for these materials. Senator Markey talked about his request. You said you would sit down and talk to him.

Here is the situation with me. The NRC is still withholding two categories of documents related to the San Onofre investigation. This investigation is important because it has implications for other reactors and the way the NRC enforces its safety requirements.

In fact, it turns out that when Diablo Canyon replaced its steam generators, it also violated the very same safety regulations that were violated at San Onofre. Yet, NRC has not done anything meaningful to learn from its repeated failures to detect noncompliance with its own regulations.

I don't have any confidence that it will and now there is another issue Senator Inhofe raised about when you are getting things done. What is this? You put it in a folder to do sometime? This makes no sense. This is very serious to me because you all looked me in the eye, as you should now, and said

that you would turn over this documentation.

Ms. Svinicki, do you remember saying yes? You do. Are you willing to turn over this document which renown constitutional scholar Mort Rosenberg said "NRC's reason for withholding the documents demonstrates a profound misunderstanding of Congress' investigatory power and that they misstate court decisions and ignore case law."

Would you be willing to turn over these documents that I have asked for?

Ms. Svinicki. Senator Boxer, I have supported our offer to engage with you and your staff on providing information and briefings.

Senator Boxer. I am asking for documents. That is not what you said yes to. You are considered as being sworn when you said that, you know, even if I didn't say do you swear. You are sworn.

I am asking you, will you turn over the documents, yes or no?

Ms. Svinicki. Senator, I have supported our previous response.

Senator Boxer. Okay. That is a no.

Mr. Ostendorff, yes or no, the documents I am requesting?

Mr. Ostendorff. Senator Boxer, we have responded on three different occasions in writing based on Commission correspondence

to request to meet with your staff and be with you to discuss in detail some of these.

Senator Boxer. I have asked you for documents. It doesn't say do you agree to ensure that you will sit down with a Senator when she asks you for documents. The answer is no.

What about you, Mr. Burns?

Chairman Burns. Senator, the request on this matter came up before I was here.

Senator Boxer. Before your time.

Chairman Burns. As I said and I think we have said before, I am committed to work with the committee. In terms of your immediate document request, with all due respect -- I said this before in my confirmation hearing -- I think there are areas -- this may be one where there are issues with respect to provision in certain types of areas.

Senator Boxer. There are words, words, words, words.

Chairman Burns. The words are, I will commit to work with your staff to see what we can do to make the accommodation to the committee.

Senator Boxer. That is not what you agreed to. You agreed to ensure that testimony, briefings, documents and electronic and other forms of communication are provided to this committee, all members and its staff and other appropriate committees.

I am glad you want to sit down. Great, we will sit. I will

sit with all of you. I want the documents.

What about you? Do you have the same answer, that you will sit down with us or are you going to turn over the documents?

Mr. Baran. The Commission, as a body, would have to decide to do that. My view, which I explained in my confirmation hearing and the last time I was here, is that our default under our internal Commission procedures should be that when a Ranking Member or a Chairman of one of our oversight committees requests documents, we should do everything we can to be responsive.

If there are documents that are particularly sensitive, we need to work with you all and make sure we provide them as soon as possible.

Senator Boxer. Let me say for the record, I know my time has expired and I am so very grateful to you, this is not a partisan matter. We take our roles seriously. It does not say we will -- each of you said you would turn over documents. You didn't caveat it. You didn't say, well, it depends on the document and I will sit down with you.

You are in violation of what I consider to be a sacred commitment. I know, because the law says, when you answered this question, it is as if you were under oath. Do any of you want to change the response you gave and just give me a yes.

Okay. Then I have to say this entire group of you commissioners, are not fulfilling an oath that you made. It is

very disturbing because we have a job to do, whether it is a budgetary job or a safety job. All of your talk here is just that.

I am asking for documents. Yes, we will have you sit down with my counsel and you. We will see where we go but this is distressing.

Thank you.

Senator Inhofe. Thank you, Senator Boxer.

Since you went over, I will only take a few moments. I would ask if you would expand a little further. If you remember my opening questions to you, I observed getting back to Fukushima, two things. One was that we have responded in way and a number of documents have come forth and there have been requests.

The other one I think that is not talked about enough is the fact that Japan was not in the same situation that we were. When I said they were not as prepared for the extreme event as our industry was, in fact the Japanese government report, their report, said the equipment the NRC required -- talking about our NRC -- following September 11 might have made the difference at Fukushima. That is huge. That is them saying this.

You guys need to be talking about this more because you get a lot of criticism and I think it is unjustified. I think this is pretty good when their report implies if they had done it the

way our practices are, that may not have happened. That is very significant.

Do you guys have any response to that? Is there any reason not to be talking about that? I think it is very important.

Chairman Burns. I might offer this, Mr. Chairman. As I recall when we received the Near Term Task Force report, the Commission did, in 2011, one of the things it noted was the benefits of what we call the B5B improvements, the positioning of equipment that was done after 9/11 which gave us a significant benefit in terms of safety.

Some of the things we did after that, as I understand, there were inspections done to ensure that equipment was placed. What the industry has done in terms of these regional support centers has enhanced those things.

I think you are right. I think particularly on that issue, what this agency had done and what the industry had done after 9/11 put it in a good place in terms of the overall safety of plants as we look holistically at the lessons learned from Fukushima. My colleagues might have some thoughts also.

Senator Inhofe. Do you have any comments to make about that? The impression I get from a lot of people is we all started at the same place and we did not. Any comments?

Mr. Ostendorff. Commissioner Svinicki and I were the two commissioners here after Fukushima. We made a conscious decision

by a unanimous Commission vote, five to zero, to not require any U.S. nuclear power plant to shut down because of safety concerns. We did not have those safety concerns.

At the same time, we believed it was appropriate to study and look at where we could make some enhancements. We have done just that.

Our comment with respect to seismic and flooding concerns, I think that was on your part, Senator Inhofe, with respect to the Japan situation, there has been significant work done in this Country in response to the requirement we put down three years ago to tell each licensee to submit their flooding and seismic reevaluations at NRC.

That work has been largely completed. Some of it is still under way but there has been a lot of progress in that particular area.

Senator Inhofe. That is good. That is specific and that needs to be said.

How about you, Ms.Svinicki?

Ms. Svinicki. The equipment that was put in place after the attacks of September 11 made all U.S. nuclear plants inherently more able to respond to extreme events. It was instituted, of course, for a terrorist attack but that same equipment allows a facility to mitigate against an extreme natural disaster.

I think the Japanese report you quoted is acknowledging that

U.S. facilities had been through the 9/11 attacks and the equipment provided that capability at U.S. plants.

Senator Inhofe. That needs to be called to the attention of the American people, people who are closely watching this.

Anything else, Senator Boxer?

Senator Boxer. I just want to thank you, Mr. Chairman, very much for this hearing and for continuing the oversight.

I would say I hope to God you are right, that we are much safer, but I will say if you go back to the Japanese statements before this, they were just like yours -- we are so safe, we are so safe. Just because we think something, the Japanese really thought they were safe. They are known for their technology and precision. I think we need to move forward.

Thank you for your leadership.

Senator Inhofe. You bet.

I think it would be appropriate to ask unanimous consent the Japanese government report be added to the record in this proceeding today.

[The referenced information follows:]

Senator Inhofe. I thank all of you for your service and for being here. We are looking forward to working in an aggressive way to enhance nuclear power in America.

Thank you very much.

[Whereupon, at 11:35 a.m., the committee was adjourned.]