

**U.S. House of Representatives  
Committee on Oversight and Government Reform  
Darrell Issa, Chairman**



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**A Crisis of Leadership**

*How the Actions of Chairman Gregory Jaczko  
Are Damaging the Nuclear Regulatory Commission*

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**Majority Staff Report  
U.S. House of Representatives  
Committee on Oversight and Government Reform  
112<sup>th</sup> Congress**

**December 13, 2011**

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# **I. Table of Names**

## **The Commission**

**Gregory B. Jaczko**

Chairman

**George E. Apostolakis**

Commissioner

**William D. Magwood IV**

Commissioner

**William C. Ostendorff**

Commissioner

**Kristine L. Svinicki**

Commissioner

## **The Chiefs of Staff**

**Joshua C. Batkin**

Chief of Staff to Chairman Jaczko

**Belkys Sosa**

Chief of Staff to Commissioner Apostolakis

**Patrice M. Bubar**

Chief of Staff to Commissioner Magwood

**Ho Nieh**

Chief of Staff to Commissioner Ostendorff

**Jeffry M. Sharkey**

Chief of Staff to Commissioner Svinicki

## **Others**

**Annette L. Vietti-Cook**

Secretary of the Commission

**William Borchardt**

Executive Director for Operations

**Martin J. Virgilio**

Deputy Executive Director for Reactor and Preparedness Programs

## II. Executive Summary

Congress never intended that commercial nuclear power be regulated by a single individual. On the contrary, Congress designed the Nuclear Regulatory Commission (NRC) as an independent agency with a five person, bipartisan panel of Commissioners at its helm. The American people need to have confidence that the actions of the NRC are not in support of just one individual's agenda but, rather, singularly in support of the agency's mission. That mission is to enable the nation to safely use radioactive materials for beneficial civilian purposes while protecting people and the environment. The leadership of Chairman Gregory Jaczko has undermined Commissioners, staff, and the public confidence that the NRC can continue to remain focused on its vital mission.

The Committee's investigation initially focused on the Commission's actions during three series of events: the termination of the NRC's technical review of the Yucca Mountain license application, the emergency response to the reactor accidents in Japan in March 2011, and the evaluation of lessons learned from the Japanese accident. Each of these examples warrants separate examination and clarification. Understanding why and how certain actions were taken both important and informative. This report, however, is not meant to be an exhaustive account of each of these events or a judgment on the prudence of any decisions made.

In the course of the Committee's investigation, it became apparent that the controversy surrounding these events was symptomatic of a more pervasive problem at the NRC. The Committee reviewed tens-of-thousands of pages of documents and conducted 15 transcribed interviews with the following NRC employees:

- Joshua Batkin – Chief of Staff, Chairman Jaczko
- Jeffrey Sharkey – Chief of Staff, Commissioner Svinicki
- Patrice Bubar – Chief of Staff, Commissioner Magwood
- Ho Nieh – Chief of Staff, Commissioner Ostendorff
- Belkys Sosa – Chief of Staff, Commissioner Apostolakis
- R. William Borchardt – Executive Director for Operations
- Martin Virgilio – Deputy Executive Director for Reactor and Preparedness Programs
- Michael Weber – Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs
- Stephen Burns – General Counsel
- James Dyer – Chief Financial Officer
- Annette Vietti-Cook – Secretary of the Commission
- Catherine Haney – Director, Office of Nuclear Material Safety and Safeguards (NMSS)
- Lawrence Kokakjo – Acting Deputy Office Director, NMSS (Prior)
- Aby Mohseni – Acting Director, Division of High Level Waste Repository Safety, NMSS (Prior)
- Daniel Graser – License Support Network Administrator

Documents and witness testimony revealed that as the Chairman's interpretation of his authority evolved to closely resemble that of a single administrator - his management style and

aggressive behavior simultaneously eroded the collegial structure and values inherent in the NRC.

Chairman Jaczko broadly interprets the authority granted to the NRC Chairman under existing statute, most notably the Reorganization Plan No. 1 of 1980. This interpretation has been his justification for centralizing power within his office, limiting the role of the other four commissioners and exerting greater control over the NRC staff. His actions undermine the Commission structure and demonstrate a blatant disregard for decades of established practice at the NRC. What began as a lack of trust and collegiality at the Commission level has become a battle of wills – the will of the Chairman versus the will of the majority. It is a battle that plays out on an almost daily basis, in everything from apparent minutia to substantive policy debates. However, even seemingly obscure disagreements over internal process carry significant implications for the safety and efficiency of the American nuclear industry.

When faced with opposition from a majority of his colleagues, the Chairman has sought new and unprecedented ways to impose his agenda. He has leveraged his position as the principle executive officer to pressure career NRC staff to support his policy positions, goals, and priorities. In some cases, even when a majority of the Commission supports a specific position or action, career staff are made to believe that they cannot execute that action without approval from the Chairman. This tactic leaves NRC staff to decide between following the Chairman's orders to the dismay of the majority of the Commission or disobeying the Chairman and incurring his wrath.

The Committee's investigation found that the dysfunction created by this situation is having a corrosive effect on the NRC's ability to remain focused on its important work. Thus far, the staff's commitment to uphold the NRC's values and reputation has prevented the agency from reaching a point that compromises safety. But the current situation is not sustainable and Chairman Jaczko continues to make it worse.

### III. Findings

**FINDING:** Chairman Jaczko and his staff used political considerations to try to intimidate and influence other Democratic Commissioners' votes on matters related to Yucca Mountain.

**FINDING:** Chairman Jaczko's Chief of Staff suggested that Commissioner Magwood, a Democrat appointed by President Obama, should be concerned that his vote in favor of an Action Memorandum that would have continued work on Yucca Mountain might leak and be viewed as a lack of support for the Administration.

**FINDING:** When Chairman Jaczko did not get the support of his fellow Commissioners for a post-Fukushima review roadmap proposal, he stormed out of an agenda planning meeting and announced his plan at a speech at the National Press Club.

**FINDING:** Chairman Jaczko strategically withheld information to gain the support of his Democratic colleagues for his plan to end the staff's technical review of the Yucca Mountain license application. His actions undermined the trust of his fellow Commissioners.

**FINDING:** Chairman Jaczko's aggressive behavior and attempts to threaten or intimidate his colleagues prevents constructive discussion among Commissioners and undermines the NRC's deliberative process.

**FINDING:** Rather than trying to working with his colleagues to improve communications and restore a constructive relationship, Chairman Jaczko became increasingly defiant and exposed more of the NRC staff to the toxic environment present at the Commission level.

**FINDING:** Chairman Jaczko's tendency to game the system has forced his colleagues to rely on formal votes to move the NRC on matters that traditionally were handled informally. The need to use the formal voting process to play defense against the Chairman has made it difficult for the Commission to carry out its basic functions.

**FINDING:** Chairman Jaczko has sought to leverage his supervisory authority over the staff to pressure them to support his policy objectives.

**FINDING:** Chairman Jaczko became "shaking angry" and accused the Deputy Executive Director for Operations of being dishonest when a vote paper delivered to the

Commission did not conform to his desires, interests, or views. Staff had already significantly altered the paper to conform to the Chairman's vision.

**FINDING:** Chairman Jaczko used his supervisory authority to berate and compel staff to withdraw a voting paper that – although consistent with the expectations of his colleagues – included a suggestion, not even a recommendation, that was contrary to his preferred course of action. His actions deprived his colleagues, and the public, of information that would help inform the Commission's consideration of the task force recommendations.

**FINDING:** Chairman Jaczko demanded that career NRC staff support his positions when discussing policy matters with his fellow Commissioners. Staff no longer felt that they could provide independent, unbiased advice to the other Commissioners.

**FINDING:** Chairman Jaczko stated an expectation that he should see voting papers before they are shared with his colleagues. Having prior access to voting papers would allow the Chairman to pressure staff to pull back or otherwise edit papers contrary to his policy priorities. This instruction represented a "defining moment" for the Deputy Executive Director for Operations.

**FINDING:** Chairman Jaczko pressured staff to support his policy priorities in order to gain leverage over his colleagues on the Commission.

**FINDING:** Four Commissioners wrote a letter to the White House explaining their concerns about Chairman Jaczko's leadership. They told the White House that he has "intimidated and bullied career staff," created a "chilled work environment," undermined and disrespected the Commission, and created a situation that "will adversely affect the NRC's essential mission to protect the health, safety and security of the American people."

## IV. The History and Evolution of the NRC

### A. Creation of the NRC

Congress has favored the Commission structure since the United States first began regulating the use of nuclear power. The first nuclear regulator, the Atomic Energy Commission (AEC), was established under the Atomic Energy Act of 1946 to monitor the application of nuclear power for defense purposes. Eight years later, the Atomic Energy Act of 1954 permitted the development of commercial nuclear power. The Act directed the AEC to perform two occasionally competing functions: encourage the use of nuclear power and regulate its safety.

Recognizing this conflict, Congress divided these functions between two different agencies in the Energy Reorganization Act of 1974. The Energy Reorganization Act abolished the AEC and divided its regulatory and promotional responsibilities between the Nuclear Regulatory Commission (NRC) and the Energy Research and Development Administration (which soon became the Department of Energy), respectively. The NRC began operating as an independent entity on January 19, 1975.<sup>1</sup>

### B. Organization of the NRC

Two pieces of legislation dictate the current organization of the NRC, including the roles and responsibilities of both commissioners and certain senior staff: the Energy Reorganization Act of 1974, which created the NRC, and a law passed shortly after the accident at Three Mile Island, the Reorganization Plan No. 1 of 1980. They are codified and supplemented within the NRC in the Internal Commission Procedures.

#### 1. Energy Reorganization Act of 1974

The Energy Reorganization Act of 1974 laid the foundation for the structure and functions of the newly established NRC. It created a five member commission, with one commissioner selected by the President to serve as chairman. The Act also defined the roles and responsibilities of each commissioner:

Each member of the Commission, including the Chairman, shall have **equal responsibility and authority** in all decisions and actions of the Commission, shall have **full access to all information** relating to the performance of his duties or responsibilities, and shall have **one vote**. Action of the Commission shall be determined by a majority vote of the members present.<sup>2</sup>

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<sup>1</sup>U.S. Nuclear Regulatory Commission website, "History," available at <http://www.nrc.gov/about-nrc/history.html> (last visited Dec. 7, 2011).

<sup>2</sup> 42 U.S.C. § 5841 (2006) (emphasis added).

The Act also addressed the unique responsibilities of the Chairman, such as speaking on behalf of the Commission and executing the policies and decisions of the Commission:

The Chairman (or Acting Chairman in the absence of the Chairman) shall be the **official spokesman** of the Commission in its relations with the Congress, Government agencies, persons, or the public, and on behalf of the Commission, shall see to the **faithful execution of the policies and decisions of the Commission** ....<sup>3</sup>

In addition, the Chairman has certain administrative duties:

[The Chairman] shall be the principal executive officer of the Commission, and he shall **exercise all of the executive and administrative functions of the Commission**, including functions of the commission with respect to (a) the appointment and supervision of personnel employed under the Commission ..., (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.<sup>4</sup>

While the Chairman is charged with exercising functions related to “the use and expenditure of funds,”<sup>5</sup> some funds-related functions remained with the Commission:

There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to **determining upon the distribution of appropriated funds according to major programs and purposes**.<sup>6</sup>

Congress took care to establish that in carrying out any of these functions, the Chairman is still bound by the will of the Commission:

**[The Chairman] shall be governed by general policies of the Commission** and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.<sup>7</sup>

The Energy Reorganization Act of 1974 also created several offices within the NRC and specified the relationship between the directors of those offices and the Commission. The Director of the Office of Nuclear Reactor Regulation, for example, was to be appointed by the Commission, report directly to the Commission, and serve at the pleasure of the Commission.<sup>8</sup> The same is true for the Directors of the Office of Nuclear Material and Safeguards and the Office of Nuclear Regulatory Research.<sup>9</sup> The Act also provides for the appointment of an

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<sup>3</sup> *Id.* (emphasis added).

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* (emphasis added)

<sup>7</sup> 42 U.S.C. § 5841 (2006).

<sup>8</sup> 42 U.S.C. § 5843 (2007).

<sup>9</sup> 42 U.S.C. §§ 5844-5845 (2007).

Executive Director, by the Commission, to perform such functions as the Commission may direct.

## 2. Reorganization Plan No. 1 of 1980

Within five years of the establishment of the NRC, management challenges were already evident at the Commission. Three studies of NRC operations,<sup>10</sup> in concert with lessons learned from the accident at Three Mile Island, demonstrated that “the current diffused management structure of the Commission has contributed to the failure by the NRC to adequately address safety issues.”<sup>11</sup> Further, the reports emphasized that “no one is accountable for running the agency.”<sup>12</sup>

### *President Carter proposed an expansion of the Chairman’s authority.*

To address these and other concerns, President Carter submitted his Reorganization Plan No. 1 of 1980 (Reorganization Plan) to Congress on March 27, 1980.<sup>13</sup> In a message to Congress, President Carter explained:

The need for more effective management of the Nuclear Regulatory Commission has been amply demonstrated over the past year. The accident at Three Mile Island one year ago revealed serious shortcomings in the agency’s ability to respond effectively during a crisis. The lessons learned from that accident go beyond crisis management, however. They provide the impetus for improving the effectiveness of all aspects of the government regulation of nuclear energy.<sup>14</sup>

To accomplish the stated objective of improving the NRC’s overall effectiveness, the President’s plan was designed to clarify the role of the Commission while strengthening the authority of the Chairman to act as the principle executive officer responsible for managing the day-to-day operations of the NRC and the Commission’s response to an emergency. It reaffirmed that “the Commission, acting on majority vote, represents the ultimate authority of the Nuclear Regulatory Commission and sets the framework within which the Chairman operates.”<sup>15</sup>

In addition, President Carter’s plan strengthened the role of the Executive Director of Operations (EDO) by moving the position under the supervision of the Chairman and making the EDO responsible for executing the day-to-day operations of the NRC. The President summarized his intent when the plan was delivered to Congress:

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<sup>10</sup> These studies included a report by a commission requested by the President (the “Kemeny Commission”), a study conducted at the NRC’s request (the “Rogovin Report”), and a GAO report (“The Nuclear Regulatory Commission: More Aggressive Leadership Needed”).

<sup>11</sup> H.R. Rep. No. 896-1043 (1980) at 3 [hereinafter House Report].

<sup>12</sup> *Id.*

<sup>13</sup> PL 98-614.

<sup>14</sup> House Report at App. 1, 16.

<sup>15</sup> *Id.*

[The Plan would] permit the Commission and the American people to hold one individual—the Chairman—accountable for implementation of the Commission’s policies through effective management of the Commission staff. Freed of management and administrative details, the Commission could then concentrate on the purpose for which that collegial body was created – to deliberate on the formulation of policy and rules to govern nuclear safety and to decide or oversee disposition of individual cases.<sup>16</sup>

### *Stakeholders expressed concerns about the Chairman’s expanded authority.*

As Congress considered President Carter’s plan, Commissioners, Members of Congress, and external stakeholders expressed concerns about the proposed changes. Many questioned how a more powerful Chairman would affect the Commission’s ability to function as a collegial body. One Commissioner testified that:

[The Reorganization Plan] will lead to friction and distrust within the Commission and may well direct the Commission’s attention away from nuclear safety and enmesh the Commission in time-consuming debates about the prerogatives of the Chairman and the full Commission, and the right of individual members to have access to information to which the Chairman has access. Under the plan, the Chairman’s role will no longer depend on the acceptance of the other members; his preeminent powers will often enable him to act without regard to their wishes.<sup>17</sup>

The robust debate triggered by President’s Carter’s plan focused on whether the Chairman’s expanded powers would negatively affect his interactions with his fellow Commissioners to the detriment of the NRC’s mission. The concerns of Congress, NRC Commissioners and other stakeholders contemplated the scenario in which a rogue Chairman would use his preeminent powers to force his personal agenda on the Commission. Specifically, concerns about expanding the Chairman’s authority centered on four potential areas of abuse:

- **Information flow.** Equal access to information among Commissioners with equal voting rights was considered fundamental. The Reorganization Plan positioned the Chairman to withhold and otherwise manipulate information meant to inform the Commission’s decisions. There was concern that a rogue Chairman could control information flow to enforce his own prerogatives.
- **Influence over the staff.** The Reorganization Plan expanded the Chairman’s supervisory and reporting authority over the staff of the agency. This would have allowed the Chairman to control the early stage of policy development by the staff, in addition to the

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<sup>16</sup> *Id.*

<sup>17</sup> Hearing Testimony before the S. Comm. on Gov’t Affairs, “Reorganization Plan No. 1 of 1980, to Strengthen Management of the NRC, Pursuant to 5 U.S.C. 903,” 96th Cong. (April 17, 18, and 29, 1980) at 130 [hereinafter S. Hearings (1980)].

later stage of policy execution and enforcement. It was feared that a Chairman with a policy agenda would use his role to hinder, rather than foster, increased Commission involvement in nuclear safety policy.

- **Opportunity to undermine the will of the Commission.** The Reorganization Plan opened the door for a rogue Chairman to undermine the will of the Commission through his expanded authority. Especially in cases where the majority of the Commission opposes the Chairman, the management efficiencies sought by the Reorganization Plan would be lost if the Commission was forced to constantly defend the majority will against a Chairman bent on implementing a personal agenda.
- **Collegiality.** A powerful Chairman threatened to undermine the collegial structure of the Commission. The preservation of a collegial body was intended to safeguard against over-politicization of the agency and abrupt change in regulatory decisions. A powerful Chairman could compromise the independence of the NRC and integrity of an open, deliberative collegial process.

***President Carter's Reorganization Plan was amended to address stakeholder concerns about a rogue Chairman.***

In response to these and other concerns, the President submitted an amended version of his plan to Congress. The House Report summarized the plan's key changes:<sup>18</sup>

- (1) The Commission will have a greater role in the selection of key program officers. Four additional positions are included in the list of appointments initiated by the Chairman for the Commission's advice and consent. In addition appointments to the Advisory Committee on Reactor Safeguards can be initiated by any one of the Commissioners or by the Chairman.
- (2) The duty of the Chairman and Executive Director of Operations to keep the Commission fully and currently informed is made explicit.
- (3) The Chairman is charged with responsibility for planning the development of policy for consideration and approval by the Commission.
- (4) The Chairman is required to delegate to the Executive Director of Operations responsibility for the day-to-day administration of the Agency.

Over the past three decades, the Reorganization Plan, as amended, has mostly served the NRC well. Previous Chairmen, with one notable exception, have generally adhered to the collegial spirit and intent of the Reorganization Plan.<sup>19</sup> Chairman Gregory Jaczko, however, has strong views on the authorities granted to the Chairman and, unlike his predecessors, relies on

<sup>18</sup> House Report, at 2.

<sup>19</sup> The notable exception is the tenure of former Chairman Shirley Jackson. For a discussion of the controversy that surrounded her leadership, see *infra* section V.B.

his unique interpretation of the Reorganization Plan to control the operations of the NRC. Documents and witness testimony show that Chairman Jaczko has used the authority and responsibilities entrusted to him in ways that make those who first raised concerns in 1980 seem prescient.

## V. The Significance of the Commission Structure

The various reviews completed prior to the submission of the Reorganization Plan concluded that the NRC could resolve its management challenges if it were transformed into an agency led by a single administrator. At the time, the NRC suffered from a diffuse management structure with no clear lines of authority. Staff were forced to treat requests from individual commissioners equally. This burdened the staff as they attempted to wade through hundreds of duplicative requests with no clear direction or prioritization. It was therefore concluded that a single administrator would be better positioned to provide the staff with clear direction while providing a source of accountability for the execution of the NRC's mission.

### A. Congress and the White House rejected the single administrator model

President Carter and Congress both rejected the notion of a single administrator in favor of preserving the NRC's traditional structure as an independent and collegial body. The Senate report provided four justifications for preserving that structure:

Decisions will be insulated from partisan political considerations and will be made, to as great an extent as possible, on the merits after full and fair consideration .... [C]ommission decisions shall not, either directly or indirectly, be subject to Executive Branch review or approval.<sup>20</sup>

\* \* \*

A multi-member body – whose members serve for set terms expiring at staggered intervals – provides stability for regulatory policy, an assurance that major directions will evolve over time. Decisions by agencies such as the NRC have a direct, often critically important impact on the industry and on the public welfare. In an area as sensitive as regulation of nuclear power, it is important to guarantee against abrupt change. . . .<sup>21</sup>

\* \* \*

A collegial setting positively contributes to well-reasoned, carefully deliberated decisions.<sup>22</sup>

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<sup>20</sup> S. Rep. No. 96-790 (1980) at 5.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 6.

\* \* \*

The NRC – like every other independent regulatory commission – has a unique relationship with Congress. The heart of the agency’s jurisdiction is the exercise of what is legislative authority to protect the public welfare through the regulation of interstate commerce. Independent status is suggested by that delegation.<sup>23</sup>

In order to address the concerns surrounding diffuse leadership and lack of accountability within the commission structure, the Reorganization Plan strengthened the role of the Chairman as the principle executive officer and the role of the Executive Director of Operations, through the Chairman, to execute the Commission’s policy direction and manage the day-to-day operations of the agency. Supporters of the Reorganization Plan believed that:

Establishing a strong chairman will enable the Congress and the public, as well as the other Commissioners, to finally have someone who can be held accountable if the agency does not function well in implementing the policies established by the Congress and the full Commission.<sup>24</sup>

Others, however, warned that the authorities granted to the Chairman went too far and would open the door for that person to undermine the intent of the collegial structure by pushing a policy agenda. Representative Anthony “Toby” Moffett, a well-known critic of nuclear power at the time, recognized the critical importance of maintaining a collegial environment at the NRC. In testimony before the House Committee on Government Operations, Rep. Moffett warned that:

To some people collegiality is an abstraction. To those familiar with the workings of this and other regulatory agencies, it is a very, very tangible asset. It is an important guarantee against policymaking by any one individual who is not adequately accountable to the Congress and to the public.<sup>25</sup>

## **B. Chairman Jaczko’s management style resembles the single administrator model**

Until Chairman Jaczko’s tenure, there had been little controversy over a Chairman’s interpretation of the authority granted under the Reorganization Plan. In fact, in the past 30 years, only one other Chairman has challenged the interpretation of the Reorganization Plan. In the late 1990’s, Chairman Shirley Anne Jackson held a similar view of her authorities as does Chairman Jaczko. Chairman Jackson’s interpretation of her authority created friction with her colleagues on the Commission. Current NRC Deputy Executive Director of Operations Martin Virgilio served as Chairman Jackson’s Chief of Staff. He stated:

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<sup>23</sup> *Id.*

<sup>24</sup> S. Hearings (1980) at 95.

<sup>25</sup> *Id.* at 15.

Okay I have worked for the agency for 34 years. I've worked in a number of different capacities. I've worked in the commission offices. I was chief of staff to Chairman Shirley Jackson. That would have been in the 1996/1997 time frame. **Chairman Jackson took a strict interpretation of the reorganization plan of 1980; I would say not to the degree that Chairman Jaczko has taken it.** But she believed that that was the way the organization should be run, that the Chairman ought to be responsible for presenting policy to the commission, that the Chairman ought to be responsible for ensuring that the staff is following the commission's policy.

**It caused a lot of, I think, friction between her and the other Commissioners at the time. And likewise, I see the same kind of friction today,** maybe to a different degree, maybe to a whole different level than what I experienced in the 1997 time frame working for Chairman Jackson.<sup>26</sup>

In the wake of Chairman Jackson's tenure, in December of 1999 the NRC's Office of the Inspector General (OIG) issued a report that found, "Commission members, from time to time, have different interpretations of the [Reorganization Plan], which can adversely affect the Commission's collegiality."<sup>27</sup>

Chairman Jaczko's interpretation of the scope of his authorities far exceeds that of his predecessors and more closely aligns with the concept of a single administrator. An evaluation of his actions in light of Congress's clear preference for a Commission structure illustrates the extent to which Chairman Jaczko has betrayed the public trust. His actions have undermined congressional and presidential intent with regard to the NRC's independence, its responsibility to provide consistent regulation of the nuclear industry, and its ability to function as a collegial body.

## **1. The Chairman compromised the independence of the NRC.**

The NRC was designed to function as an independent regulatory agency, sheltered from political considerations. During congressional hearings about the Reorganization Plan in 1980, witnesses testified that the proposed reorganization of the NRC risked compromising the independence of the Commission. A senior scientist for the Natural Resources Defense Council, Thomas Cochran, observed, "This proposed plan, if enacted, would greatly exacerbate [the Department of Energy's control over NRC appointments and policy] and would allow essentially the Department of Energy to run the Nuclear Regulatory Commission provided the Department of Energy had the ear of the President."<sup>28</sup>

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<sup>26</sup> Transcribed Interview of NRC Deputy Exec. Dir. of Operations Martin Virgilio by H. Comm. on Oversight and Gov't Reform Staff, Aug. 11, 2011, Transcript at 6. (emphasis added) [hereinafter Virgilio Tr.]

<sup>27</sup> NRC Office of the Inspector General Report No. OIG/99E-09, "Special Evaluation of the Role and Structure of the NRC's Commission" (Dec. 23, 1999) at i.

<sup>28</sup> S. Hearings (1980), at 74.

At the time, Commissioner Victor Gilinsky also noted the importance of a Chairman's ability to preserve the independence of the NRC. He testified:

We sometimes get put in a position where we have to take a position opposed to that of some other departments of Government. We regulate activities of the Department of Energy. There are some tough decisions ahead and he has to be comfortable playing the role of independent safety regulator.<sup>29</sup>

Over the past three decades, the NRC has largely avoided the concerns raised by Mr. Cochran and Commissioner Gilinsky. While not immune to controversy, the agency has certainly developed a reputation as an independent regulator. One Chief of Staff explained: **"I've been with the agency for 15 years, and I view the NRC as being a bunch of apolitical nerds outside the beltway doing nuclear issues."**<sup>30</sup>

President Obama's designation of then-Commissioner Jaczko as Chairman of the NRC in May of 2009 raised concerns about the NRC's ability to preserve its independence. Individuals both inside and outside the NRC perceived this a political favor to Senate Majority Leader Harry Reid – Chairman Jaczko's former boss and a long-time opponent of the proposed nuclear waste repository at Yucca Mountain in Nevada.<sup>31</sup> At the time of his designation, the Obama Administration had started the process of winding down the Yucca Mountain Program at the Department of Energy. Within months of assuming his new position, the administration announced plans to terminate the DOE program and withdraw the license application from the NRC.<sup>32</sup>

Over the course of the following year, despite the fact that the license application remained active before the NRC, through subtle actions and interpretations of his authority, Chairman Jaczko succeeded in terminating the NRC staff's technical review of the license application.<sup>33</sup>

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<sup>29</sup> S. Hearings (1980), at 169.

<sup>30</sup> Transcribed Interview of Ho Nieh, Chief of Staff to Commissioner Ostendorff, by H. Comm. on Oversight and Gov't Reform Staff, Aug. 9, 2011, Transcript at 29 (emphasis added) [hereinafter Nieh Tr.].

<sup>31</sup> In 1987, Congress amended the Nuclear Waste Policy Act (NWPA), designating Yucca Mountain in Nevada as the only site available for consideration by the Department of Energy (DOE), to site, construct and operate a permanent geologic repository for the Nation's spent nuclear fuel (SNF) and high level waste (HLW). In 2002, Congress and the President approved Yucca Mountain as the site for the proposed repository. After nearly two decades of research, debate, and preparation, in June 2008, DOE submitted a license application to construct and operate the proposed repository to the NRC for its review. For more information on Yucca Mountain, see GAO Report, "Commercial Nuclear Waste: Effects of a Termination of the *Yucca Mountain* Repository Program and Lessons Learned" Report No., GAO-11-229 (April 8, 2011) available at <http://www.gao.gov/new.items/d11229.pdf>.

<sup>32</sup> Peter Behr, E&E News, "Regulation: NRC commissioner says Obama's closure of Yucca Mountain distorts science and agency's role", (March 10, 2010) available at <http://www.eenews.net/climatewire/2010/03/10/6>

<sup>33</sup> For a more thorough evaluation of the events leading up to the Chairman's direction that the staff stop work on the technical review of the Yucca Mountain license application, see NRC OIG Report, "NRC Chairman's Unilateral Decision to Terminate NRC's Review of DOE Yucca Mountain Repository License Application," Report No. 11-05 (Jun. 6, 2011). [hereinafter 2011 OIG Report]

### *The Chairman inappropriately pressured fellow Democrats to support his position on Yucca Mountain.*

Documents and witness testimony obtained by the Committee show that doubts about Chairman Jaczko's interest in preserving the independence of the NRC were not unfounded. The Committee learned through documents and witness testimony that Chairman Jaczko and his staff repeatedly inserted politics into discussions with other Commissioners or their staff about Yucca Mountain.

Following the Chairman's direction to the staff to halt work on the Yucca Mountain license application, a majority of the Commissioners believed that the change in program direction was a policy decision that was appropriate for the consideration of the full Commission. In order to provide the staff with clear policy direction, the Commission began voting on an Action Memorandum (COM) initiated by Commissioner Ostendorff.<sup>34</sup>

Commissioners Magwood and Apostolakis supported Ostendorff's COM, but they had reservations about some of the details. These two offices worked together to come to agreement on a middle ground. Prior to submitting their votes on the COM, they shared their position with Chairman Jaczko. In written testimony produced to the NRC OIG, Commissioner William Magwood stated:

I met with Chairman Jaczko that afternoon and found him very agitated. He indicated that he didn't believe that this was a matter the Commission should engage and stated that what we were doing would undermine him as Chairman. He said that he would call the White House or members of the Congress to discuss the matter, which I didn't take seriously.<sup>35</sup>

Staff from Commissioner Magwood's and Apostolakis's offices testified that during negotiations related to the Ostendorff COM, the Chairman's Chief of Staff suggested that the Democrats needed to "stick together."<sup>36</sup> Patrice Bubar, Chief of Staff to Commissioner Magwood, stated:

Well, I think that Commissioner Ostendorff and Commissioner Svinicki were philosophically lining up, not necessarily because they were Republicans, but I think they were philosophically aligned. I think . . .

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<sup>34</sup> Action Memoranda (COMs) are written exchanges between Commissioners on matters before the agency or that a Commissioner wants to bring to the attention of their colleagues. Certain senior staff may also use this process to seek guidance from the Commission however Action Memoranda drafted by the staff are labeled COMSECY. A Commissioner or Commissioners will provide this in writing to their colleagues. It then goes through a formal written voting process. Once all votes are in, the SECY drafts a Staff Requirements Memorandum (SRM), which is then subject to additional review and approval by a majority of the Commission before it is finalized. For the easiest of COMs, the process is quite involved and time-consuming. For more contentious COMs, the process becomes lengthy and burdensome. For more on COMs and NRC Decision Documents, see Chapter II, Internal Commission Procedures, U.S. Nuclear Regulatory Commission, *available at* <http://www.nrc.gov/about-nrc/policy-making/internal.html>.

<sup>35</sup> Written Statement of Commissioner William Magwood to the Office of the Inspector General, U.S. Nuclear Regulatory Commission (Nov. 19, 2010).

<sup>36</sup> Transcribed Interview of Patrice Bubar, Chief of Staff to Commissioner Magwood, by H. Comm. on Oversight and Gov't Reform Staff, Jul. 26, 2011, Transcript at 180 [hereinafter Bubar Tr.].

that there was some discussions that the three Democrats should try to stick together.<sup>37</sup>

**FINDING: Chairman Jaczko and his staff used political considerations to try to influence other Democratic Commissioners' votes on matters related to Yucca Mountain.**

Belkys Sosa, Chief of Staff to Commissioner George Apostolakis, testified that the fracturing along political lines triggered by the Chairman's Office was not limited to the Commissioners' level:

The Ostendorff COM had to do with the discussion about . . . what they want, and . . . what the Republicans want versus what Democrats want. It was a conversation going along those lines. Again, this is at our level, not anything that...necessarily got sent to my boss. It's just conversation between us at this level.<sup>38</sup>

Other witnesses interviewed by the Committee testified that Commissioner Magwood's decision to vote "Not Participating" on the Ostendorff COM was prompted by political pressure from the Chairman. Ho Nieh stated:

[O]ne Commissioner stated to Commissioner Ostendorff - and his staff confirmed this with me as well - that I couldn't support it because there was too much political pressure . . . that the chairman was holding over me for that. And that was Commissioner Magwood. Again, Commissioner Magwood did not say this to me, but I was informed of that through a discussion with my principal, Commissioner Ostendorff. And Commissioner Magwood's chief of staff also provided me that same type of communication.<sup>39</sup>

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Commissioner Ostendorff, he told me that - he said, yeah, I got a call from Bill Magwood. I'm not able to participate . . . Greg is putting too much political pressure on me on this one. I don't feel that came out in the [IG] report.<sup>40</sup>

***The Chairman's Chief of Staff suggested that a Democratic Commissioner should be concerned that his vote on a matter related to Yucca Mountain might leak and be viewed as not supporting the Administration.***

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<sup>37</sup> Bubar Tr. at 180.

<sup>38</sup> Transcribed Interview of Belkys Sosa, Chief of Staff to Commissioner Apostolakis, by H. Comm. on Oversight and Gov't Reform Staff, Aug. 4, 2011, Transcript at 149 [hereinafter Sosa Tr.].

<sup>39</sup> Nieh Tr. at 8.

<sup>40</sup> *Id.* at 11.

Following the failure of the Ostendorff COM, Commissioner Magwood issued a similar COM in a renewed attempt to provide the staff with clear policy direction from the Commission.<sup>41</sup> In January of 2011, two months after Commissioner Magwood had circulated the COM to his colleagues, the Commission had started voting on a draft Staff Requirements Memorandum. Commissioner Magwood, in the interest of collegiality, instructed his staff to share a draft of his vote with the Chairman’s Office.<sup>42</sup>

In an email to Commissioner Magwood’s legal counsel, his Chief of Staff, Patrice Bubar, described the reaction she received from the Chairman’s Chief of Staff, Josh Batkin. Ms. Bubar wrote that Josh was “angry and disappointed.”<sup>43</sup> Batkin further pointed out that Commissioner Magwood, a Democrat, may want to consider his vote might be seen as unsupportive of the administration if it were leaked.<sup>44</sup>

<b>From:</b>	Bubar, Patrice
<b>Sent:</b>	Tuesday, January 04, 2011 5:58 AM
<b>To:</b>	Ammon, Bernice
<b>Subject:</b>	Fw: CR SRM
<b>Attachments:</b>	comwdm-10-0001 srm--wdm comments.docx

Attached is the Commissioners proposed vote on the COM. I shared and discussed with the Chairmans office. Josh of course was angry and disappointed. His feedback ranged from concern that the staff is confused to questioning if WDM would be concerned that his vote might be leak and he would be seen as not supporting the administration. KLS office asked what our vote would be. I told them I should have some substantive information to share today. No one beside the Chairman has voted. KLS office advised that 18th floor is looking to WDM to vote in a way that is "non partisan" so to speak.

**FINDING: Chairman Jaczko’s Chief of Staff suggested that Commissioner Magwood, a Democrat appointed by President Obama, should be concerned that his vote in favor of an Action Memorandum (COM) that would have continued work on Yucca Mountain might leak and be viewed as a lack of support for the Administration.**

Despite multiple examples where other offices noted examples of political influence from the Chairman’s office, the Chairman’s Chief of Staff told the Committee that partisanship had no place in NRC proceedings:

The Commission is not – should not be political in the sense of looking to parties for how to do their jobs and for the decisions that they make. . . .I don’t think that your vote should be partisan, your actions should be

<sup>41</sup> Action Memorandum, COMWDM-10-0001, “Commission Policy Formulation – Staff Activities Related to the Continuing Resolution and Follow-on Congressional Guidance,” (Nov. 12, 2010).

<sup>42</sup> It is common practice for Commissioners to share draft votes in an effort to work with their colleagues to find a consensus.

<sup>43</sup> E-mail from Patrice Bubar to Bernice Ammon (Jan. 4, 2011).

<sup>44</sup> *Id.*

partisan at the Commission level. . . . I don't think that partisan political politics should be part of a Commissioner's decision making process.<sup>45</sup>

The actions of the Chairman and his staff during negotiations on the COMs related to Yucca Mountain appear to contradict the testimony of his Chief of Staff.

Whether or not these actions by the Chairman's office influenced the other Commissioners' votes on matters related to Yucca Mountain, this type of behavior further undermines the public's ability to trust that the Chairman's actions are those of an independent safety regulator.

## **2. The Chairman has failed to provide consistent regulation**

One of the purposes of the Commission's structure is to provide consistent regulation of the nuclear industry to "guarantee against abrupt change."<sup>46</sup> In an area as important and complex as nuclear power, it is important that regulatory decisions evolve over time and consider the potentially significant influence these decisions can have on industry and the public welfare.<sup>47</sup>

Documents and testimony show that Chairman Jaczko has, at times, disregarded this purpose. His decision to terminate the NRC's technical review of the Yucca Mountain license application is a well-publicized example of that disregard. By unilaterally terminating the technical review of the license application, the Chairman created confusion, both internally and externally, and raised questions about the independence of the NRC's actions.<sup>48</sup>

An equally contentious and important example emerged following the accident at the Fukushima Nuclear Power Plant (Fukushima) in March of 2011.

### ***The Chairman ignored senior NRC staff and his colleagues to force action on the recommendations of the near-term task force report.***

On March 11, 2011, a 9.0 magnitude earthquake that originated off the coast of Honshu Island, 231 miles northeast of Tokyo, struck Japan. The earthquake triggered a massive tsunami that overwhelmed the coast of Japan within minutes. This tandem of natural disasters inflicted tremendous physical, emotional, and economic damage on the nation and precipitated what would become one of the worst nuclear accidents in history.

In response to the tragic events in Japan and resulting crisis at Fukushima, the NRC took steps to examine the potential need for improvements to the United States regulatory framework.

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<sup>45</sup> Transcribed Interview of Joshua Batkin, Chief of Staff to Chairman Gregory Jaczko, by H. Comm. on Oversight and Gov't Reform Staff, Aug. 10, 2011, Transcript at 162-163 [hereinafter Batkin Tr.].

<sup>46</sup> S. Rep. No. 96-790 (1980) at 5.

<sup>47</sup> *Id.*

<sup>48</sup> The other Commissioners had ample opportunity – for example through votes on the COMs issued by Commissioner Ostendorff and Commissioner Magwood – to disagree with the Chairman's direction and provide new policy direction to the staff. Their failure to act on these COMs only added to the confusion and, through inaction, allowed the Chairman's decision to remain the policy of the Commission.

In a March 23, 2011, tasking memorandum to the Executive Director of Operations, the Commission instructed:

The staff should establish a senior level agency task force to conduct a methodical and systematic review of our processes and regulations to determine whether the agency should make additional improvements to our regulatory system and make recommendations to the Commission for its policy direction.<sup>49</sup>

The memorandum directed the staff to conduct both a near-term and longer-term review. For the near term review, the staff was instructed to evaluate available information from the events in Japan and “identify potential or preliminary near term/immediate operational or regulatory issues affecting domestic operating reactors of all designs.”<sup>50</sup> The near-term task force was to provide their recommendations in a report to the Commission within 90 days. This near term effort would be followed by a more robust longer-term review, resulting in a report to the Commission within six months.<sup>51</sup>

As the individuals responsible for establishing and supervising the task force, the Deputy Executive Director for Operations, Martin Virgilio, and Executive Director for Operations, William Borchardt, received drafts of the report in early July as well as an early draft of the paper that would transmit the report to the Commission as a voting matter.<sup>52</sup> While they had no influence over the contents of the report, they were responsible for delivering it to the Commission for a vote.<sup>53</sup>

After reviewing the report and the draft paper that would deliver the report to the Commission for consideration, both the Mr. Virgilio and Mr. Borchardt believed that the NRC should solicit input from a broader range of internal and external stakeholders prior to taking action on any of the recommendations in the report.<sup>54</sup> Several factors influenced their view. The most important consideration was a critical conclusion of the task force regarding current safety of U.S. plants:

The current regulatory approach, and more importantly, the resultant plant capabilities allow the Task Force to conclude that a sequence of events like the Fukushima accident is unlikely to occur in the United States and some appropriate mitigation measures have been implemented, reducing the likelihood of core damage and radiological releases. Therefore,

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<sup>49</sup> Tasking Memorandum from Chairman Gregory Jaczko to Exec. Dir. of Operations William Borchardt, COMGBJ-11-0002 “NRC Actions Following the Events in Japan” (Mar. 23, 2011), available at <http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secy/2011/2011-0002comgbj-srm.pdf>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Consistent with the Commission direction in the March 23, 2011 tasking memorandum.

<sup>53</sup> Virgilio Tr. at 12.

<sup>54</sup> *Id.* at 13. See also, Transcribed Interview of NRC Exec. Dir. for Operations William Borchardt by H. Comm. on Oversight and Gov’t Reform Staff, Jul. 27, 2011, Transcript at 87. [hereinafter Borchardt Tr.]

continued operation and continued licensing activities do not pose an imminent risk to public health and safety.<sup>55</sup>

In light of this conclusion, Mr. Virgilio and Mr. Borchardt considered the breadth of the recommendations included in the report and the fact that the near-term report was the independent product of just seven individuals at the NRC. It had not undergone a formal review by the NRC technical staff. Also, consistent with the direction in the March 23 tasking memorandum, external stakeholders did not have the opportunity to contribute or provide input to the task force.<sup>56</sup> Executive Director for Operations William Borchardt stated:

When the task force had prepared an initial draft of the transmittal memo from me to the Commission, after we looked at it, after Marty and I looked at it, it missed what I thought was an important element, which was my feeling that, before the agency went forward with implementing any of these recommendations, it would be worthwhile to get a wide range of stakeholder input as to whether these were good ideas, bad ideas, what the cost would be. . . .many different factors.<sup>57</sup>

\* \* \*

Timeliness was very important early on. But before we impose requirements, change regulations, I think that it is valuable to get input on had we missed something. Are there people who think there ought to be recommendation 13 and 14 in addition to the 12 the group came up with? And, conversely, are there recommendations that are overly ambitious or. . . have gone to an area that is overkill for the issue that we are trying to fix? And that it is worthwhile getting that input now before the Commission makes the policy decisions about which issues to move forward on.<sup>58</sup>

Deputy Executive Director for Operations Martin Virgilio, who was responsible for supervising the task force, testified that he “wanted to see a thoughtful approach to proceeding forward.”<sup>59</sup> Specifically, he believed that the agency needed to consider portions of what he referred to as the “cumulative effects of regulation.”<sup>60</sup> Virgilio stated:

[We recently submitted another voting paper] to the commission that spoke to this notion of cumulative effects of regulation . . . we're

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<sup>55</sup> Dr. Charles Miller, et al. “Recommendations for Enhancing Reactor Safety in the 21<sup>st</sup> Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident” (July 12, 2011) *available at*, <http://pbadupws.nrc.gov/docs/ML1118/ML111861807.pdf>.

<sup>56</sup> Tasking Memorandum from Chairman Gregory Jaczko to Exec. Dir. of Operations William Borchardt, COMGBJ-11-0002 “NRC Actions Following the Events in Japan” (Mar. 23, 2011), *available at* <http://www.nrc.gov/reading-rm/doc-collections/commission/comm-secy/2011/2011-0002comgbj-srm.pdf>.

<sup>57</sup> Borchardt Tr. at 87.

<sup>58</sup> *Id.* at 102.

<sup>59</sup> Virgilio Tr. at 13.

<sup>60</sup> *Id.*

recommending that as we move forward in time, we look at the collective body of requirements that we are imposing on the industry and we try to work in a way that helps prioritize those requirements at any given point in time as industry implements new requirements and that as we develop the requirements, we work very closely with all the stakeholders, the public and the industry, to make sure that their interests are included in the requirements that we promulgate.<sup>61</sup>

Initially, Chairman Jaczko shared the staff's opinion that the Commission would benefit from greater stakeholder participation. In a July 9, 2011 email, Mr. Virgilio summarized an agreement that had been reached with the Chairman the day before:<sup>62</sup>

**From:** Virgilio, Martin  
**Sent:** Saturday, July 09, 2011 1:27 PM  
**To:** Vietti-Cook, Annette  
**Cc:** Laufer, Richard; Baval, Rochelle; Coggins, Angela; Batkin, Joshua; Bowman, Gregory  
**Subject:** The near term Task Force Report

Annette

On Friday, July 8<sup>th</sup>, Bill and I met with the Chairman on path forward related to the near term task force report. It was agreed that staff will begin developing a road map and more detailed action plan to implement the recommendations contained in the report in parallel with the voting process. We will provide the report to the Commission on the 19<sup>th</sup> for their review and approval (notation vote). We will provide the roadmap to the Commission via memo on the 15<sup>th</sup> and supplement the SECY forwarding the Report with a series of (4 or more) memos to the Commission with the staff's proposed approach for implementation, that would follow the roadmap and be based on stakeholder input and staff analysis. Note that there are 24 near term actions being recommended. We will attempt to logically group them into manageable chunks and address implementation for the group in these (4 or more) supplemental memos. The timing for these additional memos would depend on the availability of resources to do the work.

In your view, what would be the best way to proceed in a way that ties this altogether and facilitates early Commission decision and direction?

Marty

By the following week, however, the Chairman had withdrawn his support for the opinion shared by the agency's two most experienced employees and was actively working against their recommendation for greater stakeholder involvement. On July 12, 2011, he forced the staff to withdraw a signed copy of the SECY paper that delivered the near-term task force report to the Commission for consideration because it included staff's suggestion that the NRC consider obtaining broader stakeholder input before acting on the recommendations of the report.<sup>63</sup>

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<sup>61</sup> *Id.*

<sup>62</sup> Email from Martin Virgilio to Gregory Jaczko, Chairman, U.S. Nuclear Regulatory Commission (July 9, 2011).

<sup>63</sup> It is important to note that the staff, based on their discussions with the Chairman, had specifically excluded this suggestion from the "Recommendations" section of the SECY paper. The only Recommendation included in the SECY paper was "The EDO recommends that the Commission review the Task Force report and provide direction on specific Task Force recommendations."

On July 15, 2011, despite the fact that the Commission had requested that staff provide a proposed “roadmap” to guide the review of the recommendations of the task force report, the Chairman forced staff to present his alternative plan. The Chairman’s plan included a 90-day review and limited stakeholder involvement in a series of Commission meetings.<sup>64</sup> This was in stark contrast to what Commissioners expected. Based on their conversations with staff following the staff’s July 8 meeting with the Chairman, the Commissioners anticipated a roadmap that included a more fulsome review of the task force recommendations. Jeffrey Sharkey, Chief of Staff to Commissioner Kristine Svinicki, stated:

My understanding was a staff-developed road map was going to be provided to the Commission that would lay out a process where the recommendations in the report would be provided to the steering committee for the longer term review for a more fulsome stakeholder engagement process, and by stakeholders, that means internal and external stakeholders, because the NRC staff, technical staff, what we call the line organization, didn't actually review the report. They were a resource available to the task force, but they didn't review the report.<sup>65</sup>

***The Chairman presented a post-Fukushima review plan publicly that had been rejected by his fellow Commissioners.***

During an agenda planning meeting on July 18, 2011, the other Commissioners informed the Chairman that they could not support his proposed road map. The Chairman gaveled down a fellow Commissioner in mid-sentence, stormed out of the meeting with his colleagues and released his plan to the public that afternoon during a scheduled appearance at the National Press Club.<sup>66</sup> When his colleagues’ votes on the near-term task force report reflected a desire for greater stakeholder involvement – consistent with the recommendations of experienced NRC staff – Chairman Jaczko accused them of stalling by focusing on process rather than the recommendations of the report.

At an August 2nd hearing before the Senate Committee on Environment and Public Works, he once again highlighted his plan for a 90-day review, reinforcing the impression that his colleagues were the ones delaying action on the Task Force recommendations through their focus on process:

Sen. Sanders: Chairman Jaczko, is the process now ready to go? Where is the confusion then? What am I missing here?

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<sup>64</sup> Agenda Planning Materials, “Roadmap for Commission Decision Making and Obtaining Stakeholder Input on the Near-Term Task Force’s Recommendations.” (July 15, 2011).

<sup>65</sup> Transcribed Interview of Jeffrey Sharkey, Chief of Staff to Commissioner Svinicki, by H. Comm. on Oversight and Gov’t Reform Staff (Aug. 5, 2011) Transcript at 24 [hereinafter Sharkey Tr.].

<sup>66</sup> For a more detailed description of these events, see *infra*.

Chairman Jaczko: Well I think there's a bit of a – we're kind of stuck I think on developing the process rather than just moving forward to actually begin the discussion and the dialogue on the recommendations.

Right now what we're talking about is the process to have that discussion and unfortunately. . . . certainly with the exception of Commissioner Ostendorff most of my colleagues have weighed in about the process and not about specific. . . .

Sen. Sanders: And what are the differences of opinion with regard to process, is that how. . . ?

Chairman Jaczko: Well I think I – they're not severe. I think they're minor but I think a big difference is setting an expectation for when we can get completed.<sup>67</sup>

It is worth noting that at the time of Chairman Jaczko's testimony before the Senate, he was able to provide this perspective because all of his colleagues had voted.<sup>68</sup> Despite his calls to move quickly on the recommendations, he did not submit his vote until August 9, 2011 – only after his colleagues had denied his request for an extension.<sup>69</sup>

When he did vote on August 9, he once again criticized his colleagues' focus on process:

Rather than voting directly on the Task Force's recommendations, my colleagues have instead elected to vote proposals outlining their own approach to managing the process. As I have indicated on many prior occasions, I believe this is a result of a flawed voting system that encourages the Commission to sidestep the actual substantive policy issues presented, and this current situation is just one more example.<sup>70</sup>

**FINDING: When Chairman Jaczko did not get the support of his fellow Commissioners for a post-Fukushima review roadmap proposal, he stormed out of an agenda planning meeting and announced his plan at a speech at the National Press Club.**

<sup>67</sup> *Nuclear Regulatory Commission's Nuclear Reactor Safety Report Before the S. Subcomm. On Clean Air and Nuclear Safety and the S. Comm. on Env't and Public Works*, 112th Cong. 32 (2011).

<sup>68</sup> Commission Voting Record, SECY-11-0093, "NEAR-TERM REPORT AND RECOMMENDATIONS FOR AGENCY ACTIONS FOLLOWING THE EVENTS IN JAPAN" (Aug. 19, 2011), available at <http://www.nrc.gov/reading-rm/doc-collections/commission/cvr/2011/2011-0093vtr.pdf>.

<sup>69</sup> Nieh Tr. at 122.

<sup>70</sup> Commission Voting Record, SECY-11-0093, "NEAR-TERM REPORT AND RECOMMENDATIONS FOR AGENCY ACTIONS FOLLOWING THE EVENTS IN JAPAN" (Aug. 19, 2011), available at <http://www.nrc.gov/reading-rm/doc-collections/commission/cvr/2011/2011-0093vtr.pdf>.

The Chairman's colleagues were forced to vote on process because of his insistence on controlling the information that staff shared with his colleagues, the development of the SECY paper and roadmap, and his refusal to engage in collegial discussion at agenda planning.

The events at Fukushima certainly heighten the need for the NRC to carefully consider improvements that may be necessary to ensure the continued protection of the American public. The task force, however, noted that the continued operation and licensing of NRC-regulated facilities does not pose an imminent risk to public health and safety. In light of the circumstances, it would appear prudent that the recommendations of the task force, which reflect the opinions of a limited number of dedicated and experienced NRC employees, receive the benefit of broader internal and external stakeholder review to ensure they are both appropriate and adequate.

Chairman Jaczko's repeated attempts to limit the NRC's thorough evaluation of the task force recommendations in favor of a relatively quick Commission vote on the substance of the task force report are difficult to understand. During a transcribed interview, the Deputy Executive Director for Operations described his confusion about the Chairman's actions. Martin Virgilio stated:

Q. Why do you think he's so eager to get to a vote on the substance?

A. It defies me. It really does. **I wish I could understand what's going through his mind right now as to why he feels so strongly that we need to move forward without the advice of our stakeholders. That is very contrary to the way that we've operated this agency, especially with such significant decisions that are being made here.**<sup>71</sup>

### **3. The Chairman has undermined the collegial process for deliberation.**

A collegial setting encourages the development of thoughtful, deliberate, and well-reasoned decisions. The importance of collegiality at the NRC cannot be understated. It extends well beyond interactions between members of the Commission to the core of the agency's operations, organizational values, and commitment to an open and collaborative work environment for all NRC employees.

Chairman Jaczko's leadership and management style undermines the NRC's longstanding commitment to maintain a collegial environment at all levels of the organization. What began as a lack of trust has devolved into a complete breakdown in collegiality between the Chairman and his colleagues on the Commission.

***The Chairman deceived his colleagues when the Commission addressed the C.R. Budget Guidance.***

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<sup>71</sup> Virgilio Tr. at 120. (emphasis added).

The Chairman's actions with respect to Yucca Mountain, particularly the October 4, 2010 Continuing Resolution Budget Guidance Memorandum (C.R. Memorandum), eroded the trust of his colleagues on the Commission. As noted in the June 6, 2011 report by the OIG, the Chairman strategically shared varying levels of information with his colleagues in an effort to secure support for the language in the C.R. Memorandum.<sup>72</sup>

Initially, the Chairman's outreach was limited to Commissioners Apostolakis and Magwood. Chairman Jaczko shared the memo language and his intended direction to proceed with orderly closure of the NRC's technical review of the Yucca Mountain license application, but neither Commissioner had a clear understanding or knowledge of the practical implications of Chairman Jaczko's interpretation of "orderly closure."<sup>73</sup> Only after securing support from these two offices, and therefore a majority, did the Chairman's Office share the C.R. Memorandum language with Commissioner Ostendorff's office, along with a more thorough explanation of the Chairman's plans to instruct staff to stop work on the Yucca Mountain license application.

Patrice Bubar, Chief of Staff to Commissioner Magwood, explained that when she and her colleagues learned that other offices had received different information, they realized "oh, my gosh, we have been set up."<sup>74</sup> Bubar stated:

[W]e were kind of still new on the Commission and working where we trusted that the chairman was providing the information that should have been provided to allow for good decision making . . . we were trusting that these were good-faith negotiations.<sup>75</sup>

Bubar further testified that she and her colleagues on Commissioner Magwood's staff "were looking at it probably more innocently than maybe in retrospect we should have."<sup>76</sup> Bubar elaborated that this experience jaded her perception of interactions with the Chairman's office and served as a "lesson in understanding people and how and when to trust people."<sup>77</sup>

**FINDING: Chairman Jaczko strategically withheld information to gain the support of his Democratic colleagues for his plan to end the staff's technical review of the Yucca Mountain license application. His actions undermined the trust of his fellow Commissioners.**

*The Chairman's gamesmanship eroded trust and collegiality among the Commissioners.*

<sup>72</sup> For more background on the Chairman's actions associated with the CR Memorandum, see the 2011 OIG Report.

<sup>73</sup> 2011 OIG Report at 15-17.

<sup>74</sup> Bubar Tr. at 24.

<sup>75</sup> *Id.* at 27.

<sup>76</sup> *Id.* at 26.

<sup>77</sup> *Id.* at 24.

Over time, Chairman's tactics resulted in a complete breakdown in trust and collegiality between his Office and his fellow Commissioners. Witnesses interviewed by the Committee testified that the four Commissioners Offices work very well together but there is a complete lack of trust between them and the Chairman's Office. Jeffrey Sharkey, Chief of Staff to Commissioner Svinicki, explained that trust between the Commissioners is important to facilitating effective communication:

[S]peaking as a member of the NRC staff, for communications to be effective, there has to be a trust relationship. We need to be able to deal in an honorable way with other individuals. That trust does not exist with the Chairman's office.<sup>78</sup>

Commissioner Apostolakis's Chief of Staff, Belkys Sosa, also noted that her interactions with the Chairman's Office have forced her to be more cautious:

[U]sually when [the other Commissioners' staffs] say something, [what they actually do] turns out to be what they said they were going to do. And with the chairman's office, that has not always been my experience. I've actually had an exchange with [the Commissioner's Chief of Staff] where . . . I said to him, you know, you're lying, and . . . he tries to explain himself, but at the end day, it was a lie. So . . . I do have to be more careful when I talk to him.<sup>79</sup>

### *The Chairman's temper and management style further impeded effective communication with his colleagues.*

Rather than work with his fellow Commissioners in an open, transparent, and collegial manner, the Chairman became increasingly defiant in defending his prerogatives. For example, during an agenda planning session for the Commission's review of the near-term task force report, the Chairman stormed out on his colleagues when they disagreed with the proposal he supported. Martin Virgilio, who was present for that meeting, described the events as follows:

[I]n that meeting there was not an agreement to move forward in the way he wanted to. I think if you go to the other extreme you could find Chairmen that would have said, okay, if my proposal is not going to work let's work together. What is going to work for you all. Let's see if we can find a win in this. **But instead of looking for that win, he slammed the gavel and walked out of the room. The meeting is over. Nobody would agree with him so he slammed the gavel, got up in a huff and walked out of the room.**<sup>80</sup>

Ho Nieh, Chief of Staff to Commissioner Ostendorff, stated:

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<sup>78</sup> Sharkey Tr. at 79.

<sup>79</sup> Sosa Tr. at 21.

<sup>80</sup> Virgilio Tr. at 118 (emphasis added).

[We] were getting to the point where the chairman was visibly frustrated at the meeting, and **Commissioner Ostendorff was trying to . . . communicate what might have been helpful for him to receive, but the chairman gaveled him down at the meeting.** He was just about to raise what I thought was a concern about the SECY paper that came up, which only had one paragraph. He was going to say, well, this didn't have the information I felt would have been very helpful, but the chairman just put down the gavel and walked out of the meeting. So I think we all just, kind of, were stunned. **I had never seen that one happen before.**<sup>81</sup>

Jeffrey Sharkey, Chief of Staff to Commissioner Svinicki, stated:

It was clear to the Chairman that all Commissioners had reservations about his approach, and they weren't supportive of at least the meetings he laid out. **He gaveled the meeting closed in mid sentence as one Commissioner was talking.** The Commissioner that was talking, Commissioner Ostendorff, was trying to propose what I believe was a constructive comment. **The Chairman in his frustration just gaveled the meeting closed and walked out. It's that sort of thing I think that frustrates the ability of the Commission to operate in a collegial way.**<sup>82</sup>

Mr. Virgilio noted that he had never seen anything like that in his 34 years at the agency.<sup>83</sup>

The Chairman only made the situation worse when, that same afternoon, he presented his roadmap to the public in a planned appearance at the National Press Club. To his colleagues on the Commission, the Chairman's decision to ignore their objections and release his plan to the public without their support was another example of his disregard for the Commission structure. Commissioner Ostendorff's Chief of Staff stated:

[T]he roadmap is then released out to the public and now it's created a situation where . . . the Commission -- there's the wedge that's put into the Commission right there. It's just put out into the public... to me, that didn't seem like something that fostered collegiality . . . . You didn't agree with my proposal; I'm going public with it.<sup>84</sup>

Jeffrey Sharkey also explained:

The Chairman got clear feedback, but nonetheless he went forward knowing he didn't have the support of his colleagues. So in terms of collegiality, those sorts of things I think create an air of or clouds the air, and it impedes clear communication among Commissioners. So why they

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<sup>81</sup> Nieh Tr. at 54-55. (emphasis added).

<sup>82</sup> Sharkey Tr. at 96. (emphasis added).

<sup>83</sup> Virgilio Tr. at 119.

<sup>84</sup> Nieh Tr. at 198.

don't do it, I believe in short sometimes the Chairman has selective hearing.<sup>85</sup>

***The Chairman's colleagues avoid interacting with him because of his propensity to threaten and intimidate.***

The Chairman's propensity for angry outbursts and aggressive behavior has further driven a wedge between him and his colleagues on the Commission. Commissioner Magwood's Chief of Staff testified that her boss "does not value his time with the chairman because he doesn't really necessarily think that it results in some outcome that is good for the Commission."<sup>86</sup> Bubar stated:

[S]ometimes the tactics that the Chairman used are threatening and intimidating to some commissioners and they don't like having to have that be the working atmosphere.<sup>87</sup>

In his interview with the Committee, Jeffrey Sharkey described several examples of the Chairman's behavior and its effect on the Commissioners' ability or willingness to engage in constructive discourse. Sharkey testified about an incident in which Commissioner Svinicki asked him to keep watch over a meeting she expected to have with Chairman Jaczko. Sharkey was asked to intervene in case the Chairman became overly agitated. Sharkey stated:

[The Commissioner] was concerned that, since there had been a recent event where he had gotten very agitated or angry and raised his voice and shouted at her, she asked me if I would just keep an ear out, that if things took that same course, would I be available to step in? She was concerned. They had the conversation, it did get out of hand. She opened the door up, she asked him to leave her office. She essentially said, 'This conversation is no longer productive, I think you should leave.' At that point, I am sitting in my office, I can see directly into her office. And I can see the Chairman is very agitated, he is sitting down, but he is clearly very agitated. The door is open for about 2 minutes. There is one other staff in the office with me who witnessed it. After about 2 minutes, the door closes. The Chairman wouldn't leave the office. I think her insistence on the Chairman leaving the office got him to calm down a little bit. But that is the type of engagement that is not constructive among principals.<sup>88</sup>

**FINDING: Chairman Jaczko's aggressive behavior and attempts to threaten or intimidate his colleagues prevents constructive discussion among Commissioners and undermines the NRC's deliberative process.**

<sup>85</sup> Sharkey Tr. at 91.

<sup>86</sup> Bubar Tr. at 164-165.

<sup>87</sup> *Id.*

<sup>88</sup> Sharkey Tr. at 121-122.

***The Chairman's approach to leadership is interfering with the important work of the Commission.***

Sharkey described the breakdown in trust with the Chairman's office as a distraction from the Commission's business. He stated:

We are here to do important business on behalf of the American people. Our charter is to protect the public health and safety, not to bicker among ourselves and add ad hominem attacks.<sup>89</sup>

The lack of collegiality at the Commission level is apparent even among NRC career staff. Virgilio testified that unlike some of his predecessors, the Chairman's approach to leadership does not include consensus-building or consultation. Virgilio stated:

Q: Would you characterize the working environment under Chairman Jaczko's Commission to be collegial?

A: No. My benchmark is if you go back to somebody like Dick Meserve, where Dick Meserve would have various Commissioners responsible for various activities, I mean he would consult with them about votes. He would work to build consensus amongst the Commissioners as they were working on a particular issue. He would compromise clearly in order to get a consensus, to get an agreement to move forward. That is sort of one side of the coin and a model of consensus.

Q: So with that as your benchmark, are we on the complete opposite side of the spectrum at this point?

A: I think so, I really do. Where I think that you have four Commissioners - on this very issue [the recommendations of the near-term task force] I think you have four Commissioners that are working together to try to form a consensus amongst the four of them as to how to move forward and he's on the sidelines on this.<sup>90</sup>

Senior managers have sought to shield the majority of NRC staff from the effects of the breakdown in collegiality at the Commission level. Executive Director of Operations William Borchardt stated:

[W]e've really emphasized the importance of working cooperatively with each other . . . across office lines within the NRC, not being stovepiped or being territorial. And so, it's that cooperative work ethic that I think has made us . . . a particularly effective agency.

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<sup>89</sup> *Id.* at 120.

<sup>90</sup> Virgilio Tr. at 114-115.

The time period while the IG investigation was going on and as it has continued, you can't really say that same behavior is being modeled at the Commission level.

For a while, it was somewhat invisible to the staff. Those in the office director position, my deputies, we all saw it. And that's what I was referring to as the clay layer . . . I got my management team together and said, look, this is the reality, this is what's going on in the Commission offices, but our job is to make sure that the 4,000 people stay focused on the mission, keep living the values that have been so successful.

But as time goes on and more and more things happen and more gets into the press and other public vehicles, the staff will see it more and more. And I don't think it has caused a significant problem yet, but that's one of the things that I worry about . . . .<sup>91</sup>

The Chairman's inability to work with his fellow commissioners in a constructive, collegial manner has worsened with time. This has had an increasingly negative effect on the NRC staff as the Chairman has attempted to circumvent his colleagues by pressuring career staff to support his policy objectives. Rather than work with his colleagues to restore any semblance of constructive discourse, the Chairman has expanded the problem, exposing a broader range of NRC staff to the toxic environment that had previously been isolated to the NRC's leadership.

**FINDING: Rather than trying to working with his colleagues to improve communications and restore a constructive relationship, Chairman Jaczko became increasingly defiant and exposed more of the NRC staff to the toxic environment present at the Commission level.**

## VI. The Ultimate Authority of the Commission

In addition to preserving the commission structure, the Reorganization Plan reaffirmed that “the Commission remains the ultimate authority of the agency.”<sup>92</sup> The changes in management were intended to improve the efficiency of the Commission within that model by making the Chairman and Executive Director of Operations (EDO), through the Chairman, responsible for executing the policies established by the Commission. While this structure sought to remove Commissioners' involvement in the day-to-day operations of the agency, the Plan is clear that “In the event of disagreement as to what constitutes policy or whether the policy is being faithfully executed, **the Commission, by a majority vote, prevails.**”<sup>93</sup>

The concern held by some about the Reorganization Plan was that it would allow a rogue Chairman to game the system by selecting which items on the agenda are matters of policy (and

<sup>91</sup> Borchardt Tr. at 21-22.

<sup>92</sup> S. Rep. No. 96-790 (1980) at 2.

<sup>93</sup> *Id.* at 3. (emphasis added).

thus subject to a vote) and which are not. In 1980, Commissioner Kennedy warned, “when people start drawing lines and saying this is policy and this is not, they usually wind up more like philosophers and less like managers and I think that is exactly where we turn out to be.”<sup>94</sup>

The system by which the Commission makes policy appears straight-forward – the Commission establishes policy, the Chairman and EDO are responsible for executing that policy, and if the Commission disagrees with any action they can vote, as a majority, to provide new direction. Conversely, if the staff believes there is an issue that may require policy direction from the Commission, they provide that information, through the EDO, to the Chairman who presents it to the Commission for consideration. Commissioner Kennedy noted, however, that there are inherent loopholes in such a system, which was noted by Commissioner Kennedy, “if you build in ambiguity, then somebody who doesn’t want to make it work, or for other reasons wants to use those ambiguities to further a particular cause, it can be done.”<sup>95</sup>

By taking advantage of these loopholes to impose his policy preferences – described by OIG staff as “playing checkers” – the Chairman has been able to frustrate the intent of the Commission.<sup>96</sup> The Chairman’s approach to policymaking is precisely what Representative Toby Moffett warned Congress about in 1980:

What about the other situation . . . in which the majority of the Commissioners oppose the Chairman? Isn’t it equally obvious that it will be at that moment that these special powers will be most appealing to the Chairman? Isn’t it clear that if these powers are ever to be needed and utilized at all, it is precisely by a Chairman bent on going against the majority will of the Commissioners? And if that be the case, is this plan not clearly constructed to gut the Commission form of regulation? And would it not be subject to the basest sort of partisan political manipulation?<sup>97</sup>

## **A. Chairman Jaczko strategically interprets policy**

A Chairman can undermine Commission policy and impose his agenda by abusing his authority in two ways. First, the Chairman can claim that certain policy issues are in fact administrative issues and, as such, he has authority to act unilaterally to address them. By pulling issues important to his agenda out of the policy realm and into the administrative realm, the Chairman can prevent the full Commission from ever considering them without a majority vote to do so.

In cases where a majority decides that the full Commission should consider an issue, the Chairman may still use selective interpretation of Commission policy decisions to frustrate the

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<sup>94</sup> S. Hearings (1980) at 104.

<sup>95</sup> S. Hearings (1980) at 191.

<sup>96</sup> Meeting between the Staff of the Office of the Inspector General, U.S. Nuclear Regulatory Commission, and Committee Staff (June 16, 2011).

<sup>97</sup> S. Hearings (1980) at 16.

Commission's intent. Documents and witness testimony show that through intimidation and the inherent leverage of his position, the Chairman pressured staff to frame and implement policy issues to favor his preferred outcome.

### **1. The Chairman undermined the Commission's intent to deliberate about how best to implement the recommendations of the near-term task force.**

As previously discussed, in response to the events at Fukushima, on March 23, 2011 the Commission initiated a near-term and longer term review of the need for improvements to the United States regulatory framework.

A majority of the Commission voted to have the near-term task force report delivered to the Commission for consideration in the form of a Notation Vote Paper.<sup>98</sup> A Notation Vote Paper is a form of a "SECY Paper," which, under the NRC's internal procedures, is the "primary decision-making tool of the collegial Commission."<sup>99</sup> Through the SECY paper, NRC staff present specific information and recommendations on a particular policy issue so that the Commission can make a well-informed decision. As one Commissioner's Chief of Staff put it, the SECY paper provides "the resource estimates, the pros and the cons, the options, something that the Commission can use to make a decision."<sup>100</sup>

Because they requested a Notation Vote Paper, the Commissioners expected to receive a separate paper that summarized the near-term task force report and provided analysis and recommendations from the NRC's senior technical staff. On July 12, 2011, shortly after receiving the task force report, the Commissioners received a five-page paper that conformed to the format and substance of a normal SECY paper, including staff analysis that the Commissioners expect from this type of paper.

The Secretary of the Commission subsequently informed the Commissioners that Martin Virgilio had requested the paper be withdrawn.<sup>101</sup> The Chairman called each Commissioner to explain "that the paper did not reflect his agreement with the EDO, and that it needed to be corrected, and that corrected paper would be submitted to the Commission."<sup>102</sup> The Commissioners later received a new document that was simply a two-paragraph memorandum transmitting the near-term task force report. The new voting paper no longer contained the staff's analysis, input, or recommendations, including the suggestion for greater stakeholder

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<sup>98</sup> Under normal circumstances, a Notation Vote Paper would include specific information necessary for the Commission to take action on the paper. The Internal Commission Procedures and existing Management Directives provide the NRC staff with specific guidance on the form and substance of SECY papers, like Notation Vote Papers, presented to the Commission. For example, if a SECY is longer than five pages, the staff is to provide a written summary that includes "the major issues (e.g., technical, policy, legal), the recommendation of the office sending the paper, and a statement concerning dissenting views (if any)."<sup>98</sup> In addition, all SECY papers include discussion of specific issues such as resource implications, schedule for completion, and indication of coordination with CFO and OGC, among other items.

<sup>99</sup> *Id.*, at II-1.

<sup>100</sup> Sosa Tr. at 11.

<sup>101</sup> E-mail from Annette Vietti-Cook, Secretary to Commission, U.S. Nuclear Regulatory Commission, to multiple recipients (July 12, 2011) (on file with the Committee).

<sup>102</sup> Sharkey Tr. at 17.

participation. Most of it had been drafted by the Chairman's staff. Belkys Sosa, Chief of Staff to Commissioner Apostolakis, stated:

When we got the paper, it said it [was] a [SECY paper], but it was a one page couple of paragraph paper with no regular format that a SECY paper used to have, like options and resource estimates and background, discussions and, you know, just a set format called by the procedures that a SECY paper has to follow.<sup>103</sup>

Staff from the other Commissioners' offices testified that based on the Commission's decision to receive a Notation Vote Paper, they expected the near-term task force report to be delivered with the NRC staff's analysis and recommendations. Patrice Bubar testified that receiving a two-paragraph memorandum came as a surprise to the Commission because it was inconsistent with the NRC's internal procedures and deprived Commissioners of valuable information they needed to make a decision. Bubar stated:

So a task force report under normal circumstances and, you know, based on what is in the procedures would not come directly to the Commission, it would come through the management at the NRC. So certainly Commissioner Magwood was expecting that the task force report would have the insight and the evaluation of the Executive Director of Operations and the senior management at NRC. So that was our expectation that we would get something that was kind of the review done by the staff of what the task force had recommended.<sup>104</sup>

Jeffrey Sharkey testified that Commissioner Svinicki's office had the same expectation:

What that means to us is that the task force would develop a report which would be an attachment to a notation vote paper. The task force report itself is not the SECY paper . . . [O]ur expectation was that the Commission would receive the notation vote paper that's described in internal procedures with . . . the format that is established through internal procedures and through Management Directive 3.57 in Handbook 5 for that. And then the Commissioners would vote on it. An important part of that is a recommendation from the staff.<sup>105</sup>

According to the Chairman and his office, the paper was withdrawn because it was inconsistent with what the Commission had requested.<sup>106</sup> In response to a July 15, 2011 request for information from Chairman Issa, Chairman Jaczko stated that the Commission intended to

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<sup>103</sup> Sosa Tr. at 12.

<sup>104</sup> Bubar Tr. at 10.

<sup>105</sup> Sharkey Tr. at 14-15.

<sup>106</sup> Letter from NRC Chairman Gregory Jaczko to H. Comm. on Oversight and Gov't Reform Chairman Darrell Issa (Jul. 29, 2011).

vote on the near-term task force report itself, and the initial voting paper did not enable them to do so.<sup>107</sup>

By statute, the Chairman is the principal executive officer of the Commission and the Executive Director for Operations (EDO) reports, for all matters, to the Chairman. Moreover, it is also the Chairman's responsibility to ensure that the EDO and the staff are responsive to the requirements of the Commission. In this case, the Commission unanimously established a senior level agency task force to make recommendations to the Commission for its policy direction. In doing so, the Commission directed that the Task Force Report would come to the Commission as a Notation Vote Paper.

Instead, the Task Force Report was originally transmitted to the Commission as an attachment to a separate voting paper, rather than the Report itself being the item upon which the Commission would vote. Because this was inconsistent with the Commission's direction, it was my responsibility to correct this error. I personally spoke with each of my Commission colleagues to explain the matter, and none of my colleagues questioned my actions or expressed concerns to me. I did not hear that my colleagues had concerns until after receiving your letter three days later when Commissioners' staff raised this issue with my staff.

Mr. Virgilio, who was responsible for drafting the original voting paper along with the EDO and members of the task force, told the Committee he struggled to understand this explanation:

I look at what we sent to the Commission, and the recommendation is the EDO recommends that the Commission review the task force report and provide direction on specific task force recommendations as desired.

I see a disconnect here. I still don't get it. I'm ashamed to admit that what he's saying here I still don't understand why this isn't this. We asked the Commission to vote on the task force recommendations. We didn't ask the Commission to vote on this paper.<sup>108</sup>

The Chairman's manipulation of his colleagues' intent based on *his* reading of the language of the tasking memorandum exemplifies the challenges created by Chairman Jaczko's expansive view of his own authority. Through his interpretation of the Commission's direction, the Chairman removed the analysis provided by the agency's senior technical staff from the public record, including a suggestion that the Commission consider obtaining greater stakeholder input prior to acting on the recommendations of the near-term task force report. This action not only hinders the Commission's access to the independent advice of NRC technical experts, it limits the public's awareness of alternate options that staff believed the Commission should explore in evaluating the task force report.

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<sup>107</sup> *Id.*

<sup>108</sup> Virgilio Tr. at 131-132.

## 2. The Chairman undermines the Commission and mires them in process through his insistence on formal votes for any disagreements with his interpretation of Commission policy.

As previously discussed, the Reorganization Plan made clear that if a majority of the Commission disagreed with the Chairman's interpretation of Commission policy, they can vote to enforce their will. In fact, the Chairman's office argues that the Commission has tools, such as the COM process, to demonstrate the will of the majority quickly and effectively. Josh Batkin, Chief of Staff to Chairman Jaczko, testified that the process for doing so is quite simple:

It can be done as fast as the Commission wants it to be done. The COMs are specifically designed to be, I mean you could – you could grab – and I'm not trying to be facetious, but you could grab someone's business card and write a COM and have five Commissioners sign on to it or three Commissioners signs on to it. It is supposed to be a way to have quick action.<sup>109</sup>

Others hold a different view of the COM process. In the opinion of certain staff, the COM process is burdensome and was not meant to be used for simple matters. Belkys Sosa observed:

[I]f you look at the COMs from historical perspective how that has been historically used in the agency, you can go back to any chairman and figure out or any commissioner, for that matter, and figure out how many COMs did they issue during their tenure there, and you're going to find a few. It's not the way that we do business. As I say, a COM is a proposal by one commissioner to their peers and it gets done. It's one of the things they have available, but it's not done for routine. . . .<sup>110</sup>

The Chairman's constantly evolving interpretation of his authority and tendency to game the system to impose his personal policy preferences have forced his colleagues to closely scrutinize his every action in that context. They are left with few options: If they fail to stand up to the Chairman, it marginalizes the role of the Commission and, in essence, affirms his interpretation of Commission policy or decision. If they are forced to initiate a formal vote, such as a COM, for every disagreement with the Chairman's interpretation of authority or Commission policy, the Chairman is effectively being allowed to influence even the most fundamental Commission business. Witnesses testified to the Committee that the dilemma the Chairman has created is distracting the Commission from its normal business and even runs afoul of common courtesy. Sosa stated:

There is always the opportunity to do a COM, but I know that there would be at least one commissioner who would say I am not doing a COM to basically make sure that what is . . . within my authority to do is being done. So . . . **we don't want to get into the business where we have to**

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<sup>109</sup> Batkin Tr. at 55.

<sup>110</sup> Sosa Tr. at 118-119.

**write a COM to just carry out what should be the normal business of the Commission.**<sup>111</sup>

Belkys Sosa stated:

[W]e have been in business for a very, very long time and you cannot have rules about every single exchange of information for everything that comes up . . . So having common courtesy and being able to treat each other equally, I think, is an expectation. You don't need to write it down on a piece of paper but, unfortunately, that's not the way things are being conducted right now.<sup>112</sup>

Sharkey also shared this perspective:

The COM process today ... **the Commission is being forced into the COM process, where in the past simple matters could have been dealt with in a less formal way,** and bringing things to closure in most matters, it's not that difficult.<sup>113</sup>

**FINDING: Chairman Jaczko's tendency to game the system has forced his colleagues to rely on formal votes to move the NRC on matters that traditionally were handled informally. The need to use the formal voting process to play defense against the Chairman has made it difficult for the Commission to carry out its basic functions.**

## VII. Supervision of and Influence over the Staff

When a majority of the Commission opposes the Chairman, he has turned to another provision of the Reorganization Plan to achieve his objectives – his supervisory responsibility for the staff. The initial Reorganization Plan submitted by President Carter provided the Chairman with broad authority over the appointment and supervision of key members of the NRC staff. At the time, Commissioners strongly objected to the combination of the Chairman's appointment and supervisory authority. Commissioner Gilinsky argued:

The Chairman will be the sole supervisory and reporting authority for the staff, unless he chooses to delegate that authority.

This authority opens a broad avenue for the Chairman to exercise substantial control over nuclear safety policy, in addition to his role as a voting member of the Commission. The Chairman's control will be most evident early in the critical stage of policy development by the staff, and

<sup>111</sup> Bubar Tr. at 58-59. (emphasis added).

<sup>112</sup> Sosa Tr. at 59.

<sup>113</sup> Sharkey Tr. at 11. (emphasis added).

late at the equally critical stage of policy enforcement. This role for the Chairman will hinder, rather than foster, increased Commission involvement in nuclear safety policy.<sup>114</sup>

Thomas Cochran expressed similar concerns. He noted that a powerful Chairman could use his control over the staff to limit the staff's ability to develop diverse views and options. He stated:

...the Chairman could simply say, well, I want you to develop a plan to do it my way, don't come to me with a bunch of options. That will just get us into a lot of debate, and so forth, and the other Commissioners will become involved. So eliminating the collegial aspect in addressing some of these concerns would result, we believe, in the more narrow scoping of options that are developed by the staff.<sup>115</sup>

The President attempted to address these and other concerns associated with the appointment process through his amendments to the Reorganization Plan. Notably, the amendments provided the Commission with "a greater role in the selection of key program officers," removed the Chairman's sole authority to appoint members of the Advisory Committee on Reactor Safeguards (ACRS), and moved a number of appointments under the authority of the Executive Director for Operations.<sup>116</sup>

Despite these changes to the Plan, Chairman Jaczko has sought to leverage his supervisory authority over the staff to pressure them to support his policy objectives, even in cases where they do not agree with his perspective. As he has faced increased opposition from his colleagues on the Commission, this strategy has created an uncomfortable dynamic for staff throughout the NRC. Disagreements with his colleagues over his constantly evolving interpretation of his authority have prompted the Chairman to reach deeper into the NRC's organizational chart to control the staff's actions and communications.

**FINDING: Chairman Jaczko has sought to leverage his supervisory authority over the staff to pressure them to support his policy objectives.**

#### **A. The Office of the Executive Director for Operations and NRC Technical Staff**

Based on the changes in the Reorganization Plan, the Executive Director for Operations, under the supervision of the Chairman, is responsible for the day-to-day management and operations of the NRC. In addition to executing the NRC's business in accordance with Commission decisions, the EDO, through the Chairman, is responsible for "keeping the Commission fully and currently informed about matters within its functions."<sup>117</sup>

<sup>114</sup> S. Hearings (1980) at 131.

<sup>115</sup> S. Hearings (1980) at 75.

<sup>116</sup> House Report at 12.

<sup>117</sup> *Id.*

During Chairman Jaczko's tenure, this reporting relationship has created challenges for the EDO. The current EDO, R. William "Bill" Borchardt, contrasted the environment under Chairman Jaczko with his experience as the EDO under the previous Chairman:

Chairman Jaczko is much more of a direct supervisor, where Chairman Klein was more like the chairman of the board or . . . a member of the board of directors, who was not as interested in being involved in day-to-day details.<sup>118</sup>

Borchardt also testified that Chairman Jaczko's management style has limited his ability to interact with senior NRC managers under the EDO's supervision. Borchardt stated:

As I understood the EDO, all my predecessors in this position, and as I operated under Chairman Klein, there was the ability of the EDO to communicate issues with the rest of the agency, with the technical staff, with the 160 or so SES that reported to organizations under the EDO as the EDO saw fit . . . to raise whatever issues. Chairman Jaczko is much more of the, 'I want you to tell me what you're going to tell them before you tell them.'<sup>119</sup>

### **1. Chairman Jaczko pressured staff to withdraw the SECY paper and to provide him with an advance copy.**

The Chairman's involvement in the development of the SECY paper that delivered the near-term task force report to the Commission for consideration marked a shift in the Chairman's influence over the staff.

As staff developed the SECY paper that would deliver the near-term task force report to the Commission, they were forced to adapt to the Chairman's rapidly evolving vision of how the Commission should proceed with their review of the task force recommendations. For example, on Friday, July 8, the EDO and the Deputy Executive Director for Operations, Martin Virgilio, met with Chairman Jaczko to discuss the path forward on the task force report and requested roadmap. Mr. Virgilio described the meeting:

[EDO] Bill Borchardt and I sat down with the Chairman and we talked about what the [Commission] had asked me to do, and that was to develop this road map. We agreed . . . that in developing this road map, our vision was we would provide a series of supplemental papers to the commission, so there would be this SECY that would transmit the near term task force report and then there would be a series of supplemental papers that we would send to the commission with a staff's analysis of the task force report and the staff's recommendations on how to proceed with that.

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<sup>118</sup> Borchardt Tr. at 15-16.

<sup>119</sup> *Id.* at 16.

At that point in time, the vision that we agreed to, and I would believe that was Bill Borchardt, the Chairman and myself, the vision that we had was that we would have the staff provide a recommendation to the commission that would include stakeholders' input in the process.<sup>120</sup>

The following Monday, during a regularly scheduled periodic meeting with Chairman Jaczko, Mr. Virgilio learned that the Chairman had changed his mind over the weekend and no longer supported the strategy agreed to in the Friday meeting:

At that meeting, it seemed like to me the Chairman had had a change of heart over the weekend, that he had thought about what we had agreed to on Friday and had a different view on where we should go. And we agreed in that meeting that in implementing this road map, that we would not include a discussion of that road map in the paper that was going to be coming forward to the commission, and that we would not reference resources in the paper that was going to be coming forward to the commission.

He said what he wanted was a very simple SECY paper that would provide the report to the commission, and that resources would be provided to the commission in a separate memo and that he wanted to have . . . another meeting with the Commissioners to talk about what we would do vis-a-vis this road map.<sup>121</sup>

That afternoon, Mr. Virgilio wrote a follow-up email to the Chairman to confirm his understanding of the Chairman's new vision and outline his personal views on the task force report.<sup>122</sup>

**From:** Virgilio, Martin  
**To:** Jaczko, Gregory  
**Cc:** Borchardt, Bill; Coggins, Angela; Batkin, Joshua  
**Sent:** Mon Jul 11 17:51:00 2011  
**Subject:** The Task Force Report

Chairman

As we agreed, the SECY forwarding the Task Force Report will have no EDO analyses or recommendations. It provides the results of the team's independent review. In a separate memo we will provide the resource estimates developed by the Task Force. We have also developed a cover memo for you to use in providing the report to the White House. The

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<sup>120</sup> Virgilio Tr. at 14-15.

<sup>121</sup> Virgilio Tr. at 16.

<sup>122</sup> Email from Martin Virgilio to Gregory Jaczko, Chairman, U.S. Nuclear Regulatory Commission (July 11, 2011).

purpose of this note is to offer my initial thoughts on the Report, which we will provide to you as early as possible tomorrow.

First, I believe that the line organization should review the report and provide recommendations to you and the Commission on how to move forward. I would have the Steering Committee for the long-term review lead that effort, and involve NRC technical experts and a panel of external stakeholders. I believe the ACRS should weigh in on the report as well.

Second, I believe that orders would not be the best approach for the 11 recommended areas. I believe seismic and flood protection walk downs, ERDS modernization, and new tech specs requiring operability of existing equipment could be accomplished by Order. However, other recommendations such as containment vents, new instrumentation, new power supplies, and multi unit EP would, in my view, best be accomplished by rule making with internal and external stakeholder involvement in developing the detailed success measures.

Finally, we need to align with you and the Commission on what work we proposed to place on hold while we follow-up on the Task Force report. As the team has stated, there is no imminent risk from continued operation and licensing activities. In that light, we need thoughtful choices around what work we will defer.

Marty

OSURE

After receiving this email, the Chairman called Mr. Virgilio into his office. Chairman Jaczko proceeded to describe a new vision about how to proceed forward with the SECY paper and review of the task force report. Mr. Virgilio explained:

**[H]e and I had a conversation about his new vision about how to proceed forward.** In that conversation, he told me clearly his priority was that we would have the commission vote within 90 days. This is the first time, but it was consistent from that point forward, that he had this vision around, let's have the commission vote within 90 days.<sup>123</sup>

The Chairman's latest approach represented a complete change from just a few days earlier. Mr. Virgilio told the Committee that he believed that Chairman Jaczko's thoughts "were continuing to evolve through the day on Monday, because this was a very different conversation than what we had on Monday morning through a whole new paradigm of how he wanted to do that."<sup>124</sup>

That evening, the EDO, who was in South Korea on NRC business, responded to Mr. Virgilio's e-mail to the Chairman. He inquired whether the SECY paper retained the suggestion for greater stakeholder involvement. Mr. Virgilio assured him that the suggestion remained in the body of the SECY:<sup>125</sup>

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<sup>123</sup> Virgilio Tr. at 17.

<sup>124</sup> *Id.*

<sup>125</sup> E-mail from Martin Virgilio to Bill Borchardt, Exec. Dir. for Operations, U.S. Nuclear Regulatory Commission (July 11, 2011).

**From:** Virgilio, Martin  
**Sent:** Monday, July 11, 2011 6:27 PM  
**To:** Borchardt, Bill  
**Subject:** REPLY: The Task Force Report

Bill

Yes...here is the language:

"While some of the Task Force recommendations or sub recommendations could be treated separately, there may be value in evaluating the entire body of recommendations in a holistic manner. In addition, many stakeholders have devoted considerable effort to similar lessons learned initiatives and there would be benefit to developing alignment on the objectives, approaches and schedules for implementing safety improvements.

Our recommendation is:

"The EDO recommends that the Commission review the Task Force report and provide direction on specific Task Force recommendations, as desired."

It seems that following a weekends worth of reflection the Chairman changed course around our agreed upon plan to have the SECY supplemented by a series of papers providing the staff's recommendations. He is trying to convene an agenda planning session tomorrow to talk with the Commission about next steps.

I expect tomorrow to be "interesting times" here at the NRC.

Marty

**From:** Borchardt, Bill  
**Sent:** Monday, July 11, 2011 6:06 PM  
**To:** Virgilio, Martin  
**Subject:** Re: The Task Force Report

Hi Marty,  
Greetings from Korea; the mission is in full swing. Did we retain the suggestion to engage stakeholders in the transmittal SECY?  
Bill Borchardt  
Via blackberry

The following morning, July 12, Mr. Virgilio modified the SECY paper pursuant to the Chairman's latest vision for proceeding with the task force recommendations. He removed "a lot of material out of the paper that would have been contradictory to this new direction . . . ."<sup>126</sup> He told the Committee that he believed the resulting SECY paper was simple, just as Chairman Jaczko requested, but remained consistent with the long-standing format for SECY papers.<sup>127</sup> The only specific recommendation remaining in the SECY was "The EDO recommends that the Commission review the Task Force report and provide direction on specific Task Force recommendations."<sup>128</sup>

Shortly after the signed SECY paper was delivered to the Commission on July 12, Mr. Virgilio was summoned to the Chairman's office.<sup>129</sup> Virgilio told the Committee that the

<sup>126</sup> Virgilio Tr. at 20.

<sup>127</sup> As previously discussed, the Commission has clear guidelines for the format and substance of SECY papers.

<sup>128</sup> SECY-11-0093, from R.W. Borchardt, Exec. Dir. Of Operations, U.S. Nuclear Regulatory Commission, to The Commissioners, "Near-Term Report and Recommendations for Agency Actions Following the Events in Japan," (July 12, 2011) (*Advance Copy Policy Notation Vote* provided to the Commission by the Office of the Secretary on the morning of July 12, 2011).

<sup>129</sup> Virgilio Tr. at 19.

Chairman was “red-faced,” “flustered”, and “shaking angry.”<sup>130</sup> Virgilio testified that the Chairman became hostile and accused him of being untruthful. Virgilio stated:

I was called to the chairman's office that afternoon, and he was extremely displeased. He was extremely unhappy with the content of that paper. He felt that I had completely misunderstood his intent, that I did not understand his desires. He questioned my truthfulness, and he questioned my trustworthiness. He still believed that our call for stakeholder involvement, the way I had structured that paper following our conversations, demonstrated a lack of support for the task force, a lack of understanding for his interest and his views.<sup>131</sup>

**FINDING: Chairman Jaczko became “shaking angry” and accused the Deputy Executive Director for Operations of being dishonest when a vote paper delivered the Commission did not conform to his desires, interests, or views. Staff had already significantly altered the paper to conform to the Chairman’s vision.**

Though the staff felt strongly about the need for stakeholder involvement, they did not feel they could question the directions from the Chairman on the SECY paper. Executive Director for Operations William Borchardt stated:

Q. So why did you let it be changed, I guess? If that wasn't your view, or whoever was acting for you, how can that be changed and actually go up to the Commission and not be the view of the staff?

A. It comes, in my mind, to the authority that the chairman has as the supervisor of the EDO, executing his supervisory responsibilities to influence what your subordinates do.<sup>132</sup>

The Commissioners also reached out to staff to understand why they had withdrawn the original SECY paper. Ho Nieh, Chief of Staff to Commissioner Ostendorff, testified that a conversation he had with Virgilio led him to believe that Virgilio felt he had no choice but to take direction from the Chairman despite the fact that it was inconsistent with the Commission’s intent:

I said, is this what you wanted to be in the paper? [Virgilio] said, ‘No, the earlier version is what I wanted to be in the paper, and even a few versions before that is what I wanted to be in the paper.’ I said, ‘Well, then why did you sign it? Why did you authorize the signature?’ **He said, ‘I had no choice.’**

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<sup>130</sup> *Id.* at 25-26.

<sup>131</sup> *Id.* at 19.

<sup>132</sup> Borchardt Tr. at 90-91.

[I]t was clear to me that he felt that the chairman had given him direction as his supervisor and he wasn't in a position to not follow it.<sup>133</sup>

Patrice Bubar had a similar understanding of the direction that the Chairman gave Virgilio. She stated:

[W]hat [Virgilio] explained to me was that the chairman had directed him to withdraw the paper and the chairman said, you know, we are not on the same page here, you need to withdraw the paper. So Marty said he had no choice but to withdraw the paper.<sup>134</sup>

Jeffrey Sharkey similarly understood that Virgilio was made to choose between withdrawing the SECY paper and being subject to discipline. Sharkey stated:

[Virgilio] was directed by the Chairman to do that, and if he didn't do it, he would be guilty of insubordination.<sup>135</sup>

**FINDING: Chairman Jaczko used his supervisory authority to berate and compel staff to withdraw a voting paper that – although consistent with the expectations of his colleagues – included a suggestion, not even a recommendation, that was contrary to his preferred course of action. His actions deprived his colleagues, and the public, of information that would help inform the Commission's consideration of the task force recommendations.**

In the wake of the SECY paper, interactions between the Chairman's office and the EDO's office have become increasingly hostile. As the Chairman increased pressure on NRC staff to support his policy objectives, the EDO resisted the Chairman's aggressive management style. During the week of August 29, 2011, the Commission held two closed meetings to discuss the Chairman's desire to remove the EDO.<sup>136</sup> According to information obtained by the Committee, the Chairman informed his colleagues that the EDO had resisted efforts to interact with the Chairman in a constructive manner and that he often lacked the information the Chairman requested.<sup>137</sup> The Commissioners initially suggested that the Chairman consider encouraging him to step down when he became eligible for retirement in the coming months. In subsequent discussions with the EDO, however, the Commissioners learned that there was more to the story.<sup>138</sup>

The EDO told Commissioners that he disagreed with the Chairman's aggressive management style and attempts to force the staff to support his policy objectives.<sup>139</sup> He also noted that he would never step down before Chairman Jaczko's term expired and, if they wanted

<sup>133</sup> Nieh Tr. at 35-36. (emphasis added).

<sup>134</sup> Bubar Tr. at 16.

<sup>135</sup> Sharkey Tr. at 20.

<sup>136</sup> Telephonic Interview of ██████████ by Committee Staff (December 9, 2011).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

him to leave, they would have to force him to leave.<sup>140</sup> Based on their conversations with the EDO, the Commissioners realized that Chairman Jaczko simply wanted to replace the EDO with someone who would be more supportive of his unilateral agenda.

Armed with the whole story, the Commissioners each wrote to the Chairman to document their confidence in the EDO and that they would no longer support any effort to have him removed. The Chairman's anger at his colleagues' support for the EDO boiled over when he appeared as an invited guest at an October 5, 2011, meeting hosted by the EDO for the agency's senior career staff leadership.

Through discussions with the staff about the October 5 meeting, Commissioners learned that "his comments reflected contempt for the Commission itself and open disdain for the Internal Commission Procedures, a document that embodies governing principles from the NRC's organic statute . . . ."<sup>141</sup> According to staff present at the meeting, when asked how the staff could work better with the Commission, the Chairman had a visceral response, telling the staff that they need to work better with him to support his policy objectives.<sup>142</sup> His message was later characterized as, "I know what is best for safety so you need to get on my team, support my objectives. The other Commissioners are just getting in the way."<sup>143</sup>

## B. Commission Level Offices

Documents and witness testimony show that the Chairman's influence over the NRC staff is not limited to EDO staff, or offices that fall under the supervision of the Chairman's Office in the NRC organizational chart. Even staff that report to the Commission, most notably the Office of the Secretary and the Office of the General Counsel, have often found themselves at the center of disagreements over the Chairman's authority.

### 1. Chairman Jaczko has expanded his supervisory authority to staff that report to the Commission

The Commission's review and revision of the Internal Commission Procedures brought Commission staff into one such disagreement. From the outset, Chairman Jaczko opposed a number of the changes because he felt they infringed on his authorities as the Chairman.<sup>144</sup> For almost a year, the Commission voted and re-voted, going through multiple drafts of the Staff Requirements Memorandum (SRM).<sup>145</sup><sup>146</sup> Requests for extensions on votes – most from Chairman Jaczko's office – caused substantial delays, but nearly all were granted.<sup>147</sup> Witnesses

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<sup>140</sup> Telephonic Interview of ██████████ by Committee staff (Week of October 15, 2011).

<sup>141</sup> Letter from NRC Commissioners Kristine Svinicki, George Apostolakis, William Magwood IV, and William Ostendorff to White House Chief of Staff William L. Daley (Oct. 13, 2011).

<sup>142</sup> Telephonic Interview of ██████████ by Committee staff (Week of October 15, 2011).

<sup>143</sup> Telephonic Interview of ██████████ by Committee staff (Week of October 15, 2011).

<sup>144</sup> Nieh Tr. at 84.

<sup>145</sup> Once all votes are submitted on a particular matter, the Secretary of the Commission drafts a Staff Requirements Memorandum (SRM), which is then subject to additional review and approval by a majority of the Commissioners before it is finalized.

<sup>146</sup> Nieh Tr. at 84-85.

<sup>147</sup> *Id.* at 84-85, Bubar Tr. at 73.

expressed frustration over these delays, which they believed were driven by the Chairman's firm objections to any changes that might diminish his authority.<sup>148</sup>

In the final Staff Requirements Memorandum (SRM) for the revised Internal Commission Procedures, approved in July 2011, the Commission requested that the Office of the General Counsel (OGC) conduct a legal review of the changes approved by the Commission. When these changes were complete, the Commissioners expected that they would receive a red-line strikeout of the final SRM to reflect the opinions of the OGC. After the legal review, however, the Chairman instructed the Secretary of the Commission (SECY), Annette Vietti-Cook, not to send the red-line version of the Internal Procedures to the other Commissioners.

According to testimony received by the Committee, Chairman Jaczko informed Vietti-Cook that the final SRM did not direct this action. He instructed that if the other Commissioners wished to vote on OGC's comments, they could write a COM.<sup>149</sup> Commission staff were outraged. Belkys Sosa, Chief of Staff to Commissioner Apostolakis, stated:

[A]ll four of the commissioners requested SECY to provide the version of the SRM, the internal Commission procedures so that we could move forward, and what we wanted was the red line strike out version of the OGC comments . . . in order for the Commission to vote on that . . . and finalize the procedures. And **SECY was told by the chairman's office not to provide that, that if the commissioner wanted it they needed to write a COM so, again, it falls to another example of what is more efficient. We were outraged, to be honest.**

\* \* \*

So when she was directed by the chairman not to do it . . . she felt that she didn't have any other way to proceed unless the Commission requested it in writing. And I specifically asked her, I said, well, how can you take direction verbally from one office, but yet demand the majority give it to you in writing? Is an email enough, you know, so we sent her emails and that was not enough.

And the chairman's office, I guess, was very upset to learn that we had demanded this of SECY and that's when he called for the meeting.<sup>150</sup>

## 2. Chairman Jaczko urged staff who reported to the Commission to support his policy agenda when they communicated with other Commissioners.

When the Commissioners instructed Vietti-Cook to provide them with a revised version of the procedures, the Chairman called a meeting of NRC senior managers, including staff from

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<sup>148</sup> Nieh Tr. at 85, Sosa Tr. at 52, Bubar Tr. at 73.

<sup>149</sup> Sosa Tr. at 102.

<sup>150</sup> *Id.* (emphasis added).

the Office of the Secretary, the Office of the General Counsel, and other offices that report to the Commission. According to witness testimony, in that meeting the Chairman reminded the staff that he is responsible for interpreting SRMs and Commission policy, and that they are to take direction only from him, and not from the rest of the Commission.<sup>151</sup> He urged the staff present to support his actions rather than accept direction from other Commissioners. Virgilio stated:

A. And in this meeting [the Chairman] went through a number of - he went through a lot of - I'm still not sure I understand today why he did this, but he went through his background of how he became a Commissioner and how he became the chairman. **And it was a pep rally for all of his direct reports to say I need you on my team, I need you to be with me, I need your support as we move forward and make policy.**

\* \* \*

Q. So it sounds like he's asking the offices that, based on the organizational structure, report to the Commission to be on his team?

A. Yeah, absolutely. He was setting out an expectation that I need your help in order to move forward the agenda that I think is right for this Commission, and I want you to be there for me. I want you to work with me. **I want you to support me in your conversations with other Commissioners and all your dealings in the agency.**

Q. **So rather than trying to work with his colleagues, it sounds like it's my way or the highway. Is that what I'm hearing?**

A. **That's the extreme of where we are.**<sup>152</sup>

**FINDING: Chairman Jaczko demanded that career NRC staff to support his positions when discussing policy matters with his fellow Commissioners. Staff no longer felt that they could provide independent, unbiased advice to the other Commissioners.**

### **3. Chairman Jaczko has chilled the lines of communication between staff and his colleagues on the Commission.**

Witnesses testified that staff presently feel pressured to not interact with the Chairman's colleagues to such an extent that the ability of the Commissioners to make decisions is being affected. The Commission model – based on a group of informed individuals making collaborative decisions – has been replaced by an Administrator model in which access to information has been restricted and centralized. Sosa stated:

[I]t's five people... [I]t's what they all think and what the majority decides that provides their action to staff. So **to the extent that additional**

<sup>151</sup> Virgilio Tr. at 125-126.

<sup>152</sup> *Id.* (emphasis added).

**information is required for them to make an informed decision, that's what should be done. And the general sense, and what we hear from senior managers, even people in the staff, is that they are not allowed to provide that, that they were . . . they were directed by the chairman's office not to.**<sup>153</sup>

Witnesses further testified that the environment created by Chairman Jaczko has made it difficult for NRC staff to perform their jobs. Nieh stated:

I would conclude that he sometimes has, because of his management style, has maybe not treated some staff with respect and has, because of his management style, created an environment where **senior staff, managers are just at the point where they're unable or unwilling to provide what they think is the right thing to do.**<sup>154</sup>

\* \* \*

**[N]ow you have this level of senior management in there that almost is like forced to choose between either the chairman or their staff. So it really I think puts the NRC management in a very difficult situation.**<sup>155</sup>

\* \* \*

[I]t was clear to me that [Virgilio] felt that the chairman had given him direction as his supervisor and he wasn't in a position to not follow it. And I think there's probably other examples of that as well, where I think people like [the CFO], some of the deputy EDOs and the secretary, just feel that, despite what they might think is the right thing to do, they're unable to do that.<sup>156</sup>

The work environment at the NRC has further deteriorated because of the disconnect between the values of senior leadership and staff. Sharkey stated:

[The NRC staff] found it very difficult to perform their jobs and to follow the direction from senior leadership where the senior leadership doesn't share the same organizational values that NRC espouses. So to answer your question about a chilled environment, I think that is also an indicator of a chilled environment.<sup>157</sup>

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<sup>153</sup> Sosa Tr. at 54. (emphasis added).

<sup>154</sup> Nieh Tr. at 196. (emphasis added).

<sup>155</sup> *Id.* at 27. (emphasis added).

<sup>156</sup> Nieh Tr. at 35-36.

<sup>157</sup> Sharkey Tr. at 162.

\* \* \*

**I think the integrity of the policy process at NRC, it's important for the staff to have the ability to provide its perspective to the Commission, whether the Commission agrees to that perspective or not. That's what the voting process is for. So that's really what my concern is.**<sup>158</sup>

The toxic culture and erosion of NRC's values are taking their toll on the agency staff. One of the NRC's leaders on the technical staff explained that the atmosphere created by the current Chairman has not only hurt the NRC's public image but also prompted him to consider accelerating his own retirement plans:

Q. You mentioned earlier that you think the problems of the Commission are bleeding into the staff.

A. Oh, yeah.

Q. Can you tell us more about that?

A. I just you know, the staff is very cognizant of the trade press and what's going on. And you can't pick up an edition of Inside NRC without seeing what's going on and the arguments that's going on within the Commission today.

And, again, it goes back to where I was before. People used to call us out as you are the best place to work in the Federal Government. If what's happening to me is happening to the staff, which I can't believe it's not, their friends and neighbors are saying, you work for the NRC, right? What the heck is going on there? Why are we reading all this stuff in the papers about you and the Commissioners? You know, it has to have an impact on the staff.

Q. What do you think that impact is?

A. It is somewhat the impact of having been the best place to work in the Federal Government for three times running is its exhilarating. It makes you want to come to work. It is a great place to work. Yeah, I want to be there. You can't wait to get to work in the morning.

The downside of that is if all of a sudden your neighbors and your friends and your family are saying what are you doing there, why are you there, that's a demotivating factor.

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<sup>158</sup> *Id.* at 33. (emphasis added).

Q. Will the current atmosphere under the current chairman affect your decision to stay longer at the agency past your retirement?

A. It could. It really could.<sup>159</sup>

## VIII. Information Flow

One of the most controversial aspects of the changes suggested by the Reorganization Plan was their effect on the flow of information at the NRC. As explained in the Senate report, individuals at the NRC were worried that a rogue Chairman might selectively limit access to information:

The question posed by members of the NRC was whether the Chairman, given increased control over the staff and resources of the agency, might be able to stifle the flow of information to other Commissions in order to increase his leverage over policy deliberations, rulemaking proceedings or adjudications.<sup>160</sup>

At the time, OMB Executive Associate Director Harrison Wellford explained that the Carter administration's desire was to create a management system that would reduce the burden placed on the staff.<sup>161</sup> In response to the concerns raised by the Commissioners and others, Wellford offered a statement of principles:

The Commission shall have full access to all information within the Agency, including that in existence that which requires development by staff. The Chairman may not withhold or delay providing information requested by the Commission. Individual members shall also have full access to all information in order to assure diverse views are properly informed.<sup>162</sup>

Wellford further clarified that the administration's intention was for Commissioners to enjoy equal access to information. It was the intent of President Carter:

[T]o ensure a full and free flow of all information needed by the Commission or its members and at the same time to provide for an orderly process with effective use of valuable staff resources. The Commission,

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<sup>159</sup> [REDACTED]

<sup>160</sup> S. Report at 8.

<sup>161</sup> Mr. Wellford directed President Carter's Reorganization Project, which "prepared and advocated before Congress executive agency reorganization plans for . . . the Nuclear Regulatory Commission and several other agencies." <http://www.lw.com/AboutLatham.aspx?page=RetiredPartnerBio&attno=00481>.

<sup>162</sup> S. Hearings (1980) at 10.

not the Chairman, will resolve any issue and set any internal rules in this vital area.<sup>163</sup>

Commissioners objected to the notion that they would have to vote in order to gain access to information the Chairman deemed unnecessary for them to fulfill their responsibilities. Commissioner Richard Kennedy noted:

To get information requires – in some instances, would require – an action by the Commission. Now, causing the Commission to meet and to try to find a majority to request information hardly seems the height of efficiency . . . .

[I]f a man wants information, how does he know whether it is important to policy or not if he can't get it. The answer, of course, is, well, he finds other ways to get it. Let me suggest that that is not the way to build an organization either, if you are causing top people of the organization to go around it.<sup>164</sup>

The Carter administration made changes to the language of the Reorganization Plan to address these concerns. First, the language associated with the application of section 201(a)(1) of the Energy Reorganization Act of 1974 was revised to ease restrictions on access. In addition, the amended plan clarified that “The Chairman and the Executive Director for Operations, through the Chairman, shall be responsible for insuring that the Commission is fully and currently informed about matters within its functions.”<sup>165</sup>

## **A. Chairman Jaczko withheld his intent from his colleagues to gain their support**

The issue of information flow has continued to be a point of disagreement at the Commission. In a June 6, 2011 report, the Office of the Inspector General (OIG) found that the Commissioners often feel they are not privy to certain information held by the Chairman in cases in which he has determined something to be an administrative matter. According to the IG:

[Chairman Jaczko] controls information provided to the other Commissioners based on his interpretation of his statutory authority as Chairman versus the authority given to the Commission. Because he acts as the gatekeeper to determine what is a policy matter versus an administrative matter, and manages and controls information available to the other Commissioners, they are uncertain as to whether they are adequately informed of policy matters that should be brought to their attention. Ultimately, however, all Commissioners have the ability to

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<sup>163</sup> *Id.*

<sup>164</sup> S. Hearings (1980) at 122.

<sup>165</sup> S. Report at 9.

bring what they perceive as policy matters before the Commission by writing a COM and gaining majority Commission support.<sup>166</sup>

While the COM process is available to the Commission, it is not always efficient, nor practical, to ensure that the Commission is informed of policy matters. This is especially true if the Commission is unaware of information or forced to spend their and the staff's time obtaining information through other channels. This issue of "you don't know what you don't know" was explored in the 1980 hearings:

Senator Levin: If one of the members of the Commission feels that information involves a policy question ---

Mr. Ahearne: Then if he can convince two other on the Commission, the decision goes to the Commission.

Senator Levin: But he cant get the information, you just said.

Mr. Ahearne: That is right.

Senator Levin: How can he make out an argument that this involves policy if he cant get the information?

Mr. Ahearne: On something like that, if he does not have some other source of information, he could not.<sup>167</sup>

Chairman Jaczko has argued that he has limited the information that goes to the Commission in an effort to make the Commission more efficient.<sup>168</sup> While there may be some merit to improving how the Commission focuses on policy matters, his failure to involve his colleagues in the process and their inability to trust his actions based experience had the opposite effect.

The EDO also disagreed with the Chairman's strategy and told the Committee that the issue of information flow contributed to a strained relationship with Chairman:

[I]t's basic philosophical differences as to . . . management style and management technique and this open, collaborative work environment.

I didn't see the benefit to not providing these information papers, for example. He had stated that, and I believe, it's his intent to try to make the Commission more efficient in its operation by only giving them information that they need in order to do the policy work that they have before them. But I saw the downsides of not giving them that information

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<sup>166</sup> 2011 OIG Report at 46.

<sup>167</sup> S. Hearing (1980) at 102.

<sup>168</sup> 2011 OIG Report at 42.

as being more significant than that, than the upside of trying to improve efficiency.<sup>169</sup>

## **B. Chairman Jaczko withheld staff input from his colleagues to influence their votes**

The Chairman's interference on the SECY paper delivering the near-term task force report associated with the Commission's post-Fukushima review heightened existing concerns that his management style and broad interpretation of his own authority prevented the staff from sharing its expertise with the Commission. The NRC Commissioners rely on the input and recommendations of the NRC technical staff in order to make informed decisions on policy matters. Jeffrey Sharkey, Chief of Staff to Commissioner Svinicki, testified about the importance of the staff's unfiltered opinion being presented to the Commission:

The ability for the staff to bring forward, perhaps in an unadulterated way, the staff recommendation for the Commission to consider, this is the sort of filtering or interference that frustrates the ability of the Commission to make a fully informed decision. In the absence of a staff recommendation on how to proceed, the Commission does not have the full benefit in its policy deliberations on how to move forward.<sup>170</sup>

Access to staff's independent analysis is a crucial component of the Commission's decision-making process. If one Commissioner is able to control what information is shared during this process, the Commission's ability to make educated decisions on policy matters is compromised. Commissioner Magwood's Chief of Staff, Patrice Bubar, stated:

A SECY paper is to be written by the staff and it is to come to all commissioners at the same time . . . [T]he Commission needs the benefit of what the staff is thinking and the Commission doesn't need to hear from any particular individual commissioner. We hear that through the voting process. So, yes . . . I believe it is totally inappropriate to have any particular commissioner to direct the staff what to provide to the Commission.<sup>171</sup>

Ms. Sosa further explained how restricting the information flow not only hinders the Commissioners ability to consider the staff's independent advice, it also reduces transparency and distorts the public record:

Q: So if the Commissioner is frustrated . . . they feel like I only got this two-paragraph paper when what they wanted was the five-page explanation with all options, et cetera; why not just go to the staff and say, hey, I want your recommendations?

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<sup>169</sup> Borchardt Tr. at 20.

<sup>170</sup> Sharkey Tr. at 19.

<sup>171</sup> Bubar Tr. at 16.

A: That's a good question. A similar question I would say is why not provide it up front the way that we have always done it, because that paper becomes public. And then everyone can see what information they use to base their vote on. That is the transparency and the Agency. That is the way the staff and everyone can explain . . . years later how was this policy decision made?<sup>172</sup>

Virgilio testified that his interaction with the Chairman on July 12, 2011 was a “defining moment” for him.<sup>173</sup> In the course of expressing his displeasure with the contents of the SECY paper that had been sent to the Commission, Chairman Jackzo indicated to Virgilio that he should have provided the Chairman a draft of the SECY paper **before** it was released to the Commission – something that has not happened since the internal procedures were amended in 1998.<sup>174</sup>

**FINDING: Chairman Jaczko stated an expectation that he should see voting papers before they are shared with his colleagues. Having prior access to voting papers would allow the Chairman to pressure staff to pull back or otherwise edit papers contrary to his policy priorities. This instruction represented a “defining moment” for the Deputy Executive Director for Operations.**

## 1. The Internal Commission Procedures require full and prompt disclosure of information.

The issue of individual Commissioners influencing the content of SECY papers is not a novel question at the NRC. As discussed previously, in the late 1990's, the Commissioners were concerned by Chairman Shirley Anne Jackson's interpretation of her authority. As a result, the Commission made changes to the Internal Commission Procedures. A particular concern at the time was Chairman Jackson's involvement in the development of SECY papers. To protect the deliberative process from the Chairman's disproportionate influence, the procedures were revised to state, “The Chairman shall ensure *prompt and full delivery of original information* with any changes thereto, including draft SECYs and COMs, except preliminary information for development of Section 2(b) [of the Reorganization Plan No. 1 of 1980] proposals and estimates . . . unless expressly requested by the Commission.”<sup>175</sup>

The NRC's General Counsel at the time conducted a legal review of the approved revisions to the Internal Commission Procedures. In a memorandum dated July 7, 1998, the General Counsel provided her assessment of the simultaneous delivery of draft decision papers to the Commission:

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<sup>172</sup> Sosa Tr. at 65.

<sup>173</sup> Virgilio Tr. at 28-29.

<sup>174</sup> *Id.*

<sup>175</sup> *Nuclear Regulatory Commission Oversight, S. Hrg. 105-918, Before the S. Subcomm. On Clean Air, Wetlands, Private Property, and Nuclear Safety and the S. Comm. on Environment and Public Works, 105th Cong. (1998)* (answer of Chairman Jackson).

Taken as a whole, the statutory language, coupled with the legislative history of the Reorganization Plan, lead us to conclude that the balance tips strongly in favor of Commissioners' access to information needed in performance of their functions, rather than the Chairman's ability to restrict or delay information. The documents at issue are all related to the exercise or fulfillment of the Commission's functions and decision-making responsibilities as a collegial body.<sup>176</sup>

In response to a question from the Senate Committee on Environment and Public Works, then-Commissioner Diaz summarized the importance of this change:

Unless the Commissioners are fully and currently informed, they cannot properly exercise their responsibility for policy formulation (including management policy), most rulemaking, and oversight of the agency. The full Commission's access to the staff's independent and sometimes diverse views allows for better-informed Commission decisions. It also enhances the ability of each Commissioner to articulate and consider differing positions and makes more transparent to the Commission the Chairman's actions in the performance of her functions.<sup>177</sup>

As noted in the previous section, the current Chairman has increasingly sought to leverage his supervisory authority to limit the staff's ability to provide advice or recommendations that do not align with his policy objectives. In fact, despite the legal opinion developed by the General Counsel in 1998, information obtained by the Committee indicates that in September 2011, the Chairman's office provided verbal direction to staff in the EDO's office that all draft SECY papers be delivered to the Chairman for review prior to delivery to other members of the Commission.<sup>178</sup>

Chairman Jaczko's continued failure to live up to the standards made clear in response to Chairman Jackson's abuses have frustrated Commission staff. Patrice Bubar, Chief of Staff to Commissioner Magwood, stated:

Why? Why does it have to be that way? Why does it have to be so difficult? This is information that is clearly owed to the Commission that is interesting and helpful to them in their decision making process. Why can't it just be provided to the Commission?<sup>179</sup>

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<sup>176</sup> Memorandum from Karen Cyr, General Counsel, to the Commissioners of the U.S. Nuclear Regulatory Commission, "Commission Internal Procedures," (July 8, 1998).

<sup>177</sup> *Nuclear Regulatory Commission Oversight, S. Hrg. 105-918, Before the S. Subcomm. On Clean Air, Wetlands, Private Property, and Nuclear Safety and the S. Comm. on Environment and Public Works*, 105th Cong. (1998) (answers of Comm'r Diaz).

<sup>178</sup> E-mail from ██████████ to Comm. Staff (Sept. 12, 2011).

<sup>179</sup> Bubar Tr. at 165- 166.

## 2. Chairman Jaczko instructed staff to always speak with him before communicating about policy matters with other Commissioners.

In the wake of the events associated with the SECY paper and near-term report, the Chairman began to increase pressure on staff to support his policy objectives. Virgilio testified that in a meeting on July 28, 2011, the Chairman outlined his expectations to several of the NRC's top staff members. Virgilio stated:

I mean, it was clear in that meeting on the 28th, you know, that his marching orders to the three of us were that **we were to talk to him before we talked to any Commissioner about policy to make sure that we were aligned.**<sup>180</sup>

Virgilio testified that this was another “watershed event” that expanded the Chairman’s interpretation of his supervisory authority and further reduced the staff’s ability to convey independent advice to the other members of the Commission.<sup>181</sup> Virgilio understood that the Chairman expected top staff to communicate their recommendations to the other Commissioners only in cases where their views aligned with his. Virgilio stated:

Q. And so do you feel like if another Commissioner asks you -- if another Commissioner is deciding how to vote and they ask you what your recommendations are, **do you feel like you now could be prevented from providing your real recommendations if they aren't in alignment with the Chairman?**

A. **Under this model, yeah, I think that's what Chairman Jaczko expects.**<sup>182</sup>

<b>FINDING: Chairman Jaczko pressured staff to support his policy priorities in order to gain leverage over his colleagues on the Commission.</b>
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Virgilio attributed the Chairman’s shifting expectations and erratic demands on staff to an evolving interpretation of his authority under the Reorganization Plan. He stated:

Q. Has his - do you get the feeling that the chairman's sort of view of the reorganization plan, his interpretation of your reorganization plan has evolved?

A. Yes.

Q. Can you elaborate specifically on how it has evolved?

<sup>180</sup> Virgilio Tr. at 55. (emphasis added).

<sup>181</sup> Virgilio Tr. at 50.

<sup>182</sup> *Id.* at 56. (emphasis added).

A. Well, I think going through this whole process with the paper and the expectation that I would have shown him a draft and now the fact that he believes that before the senior executives discuss with other Commissioners matters of policy that we ought to be aligned with him with respect to the discussions.

Q. What do you think is prompting this sort of taking this stricter view?

**A. Maybe a strategy to ensure that the policy that he presents to the commission and the options that he recommends to the commission are in fact carried forward; leveraging his conversations and leveraging us to support his conversations and his interests.**<sup>183</sup>

## IX. The Commission Responds

Over time, the Chairman's escalating abuse of authority, disregard for the Commission structure and values, and mistreatment of NRC staff has taken its toll on the agency. Commissioners and their staffs have grown increasingly concerned that the current environment is not sustainable and could potentially undermine the NRC's core mission. Ho Nieh stated:

With respect to severity, where I see this being not sustainable and leading into something that's more severe is when it gets to the point where we're spending so much energy trying to assert the majority will is that it's going to eventually take away our focus on some of the more important issues.<sup>184</sup>

Patrice Bubar added:

Q: Do you think [the time spent trying to find information, trying to get information that you need to do your job] is compromising the Commission's ability to fulfill its responsibilities for safety and security?

A: I can't say that we are at that point just yet, but I do believe that we are definitely on a path that that could become a problem . . . . I don't have evidence right now that says, you know, we are compromising safety, but I feel as if we are definitely on a path that that could become the issue.<sup>185</sup>

After months of trying to combat the Chairman's authoritarian leadership and abusive behavior, the Commissioners came to the conclusion that the situation could no longer be addressed internally. On October 13, 2011, the four Commissioners took the unprecedented step

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<sup>183</sup> Virgilio Tr. at 28-29.

<sup>184</sup> Nieh Tr. at 184-185.

<sup>185</sup> Bubar Tr. at 189-190.

of writing a letter to the White House Chief of Staff, William Daley, outlining their concerns about Chairman Jaczko's leadership of the NRC. The letter informed the Chief of Staff:

We believe that [Chairman Jaczko's] actions and behavior are causing serious damage to this institution and are creating a chilled work environment at the NRC. We are concerned that this will adversely affect the NRC's essential mission protect the health, safety and security of the American people.<sup>186</sup>

**FINDING: Four Commissioners wrote a letter to the White House explaining their concerns about Chairman Jaczko's leadership. They told the White House that he has "intimidated and bullied career staff," created a "chilled work environment," undermined and disrespected the Commission, and created a situation that "will adversely affect the NRC's essential mission to protect the health, safety and security of the American people."**

They provided five specific observations. The Commissioners wrote that Chairman Jaczko:

- Intimidated and bullied senior career staff to the degree that he has created a high level of fear and anxiety resulting in a chilled work environment;
- Ordered staff to withhold or modify policy information and recommendations intended for transmission to the Commission;
- Attempted to intimidate the Advisory Committee on Reactor Safeguards, a legislatively-chartered independent group of technical advisors, to prevent it from reviewing certain aspects of NRC's analysis of the Fukushima accident;
- Ignored the will of the majority of the Commission, contrary to the statutory functions of the Commission; and
- Interacted with us, his fellow Commissioners, with such intemperance and disrespect that the Commission no longer functions as effectively as it should.<sup>187</sup>

They concluded:

[W]e have carried out the work before us and will continue to do so. However, Chairman Jaczko's behavior and management practices have become increasingly problematic and erratic. **We believe his conduct as**

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<sup>186</sup> Letter from NRC Commissioners Kristine Svinicki, George Apostolakis, William Magwood IV, and William Ostendorff to White House Chief of Staff William L. Daley (Oct. 13, 2011).

<sup>187</sup> *Id.* at 1.

**Chairman is inconsistent with the NRC’s organizational values and impairs the effective execution of the agency’s mission.<sup>188</sup>**

## **X. Conclusion**

For more than 18 months, Chairman Jaczko has had the opportunity to demonstrate his effectiveness as a leader. Even when his actions created tensions with his colleagues, he had the chance to mend fences and restore a level of trust and professionalism. Rather than rise to the challenge and accept responsibility for leading the agency off course, Chairman Jaczko became increasingly defiant when faced with opposition from his colleagues and the staff. For an agency that once prided itself on its values and open and collaborative work environment, the new mantra appears to be “my way or the highway.”

Today, the NRC’s ability to remain focused on its core mission has been brought under question – not only by four Commissioners but by the NRC’s staff. As Chairman Jaczko’s abuses have come to light, he and political allies are attempting to paint the picture of a victim – a white knight, standing alone against the powerful forces that seek to undermine the safety of the nation’s nuclear facilities. In this skewed portrayal, only he cares enough to do what is right. His fellow Commissioners are working against him, colluding with the NRC staff to delay the changes needed to save the nation from the potential dangers of nuclear power.

The Chairman and his supporters are attempting to demonize the NRC, a strategy that the late Commissioner Edward McGaffigan – a man who embodied commitment to the NRC, its mission, and values – reserved for groups motivated by profit or an ideological agenda – not “a dedication to protect and serve the American people.”<sup>189</sup> In a 2006 speech to new NRC employees, Commissioner McGaffigan explained:

When I arrived at NRC in 1996, I had spent two decades working on national security issues first as a Foreign Service Officer, and then as an aide to Senator Jeff Bingaman (D-NM). I did not know that I was a demon, but it did not take long for me to cast votes, based on my scientific, technical, and policy judgment, that were not to the liking of the anti-nuclear zealots and so I became a demon.<sup>190</sup>

His message to employees was simple – conduct yourself with honor and integrity, let the facts guide your decisions, even when that means telling someone something they do not want to hear.<sup>191</sup> There will always be individuals or groups so blinded by their views that they cannot allow facts to compromise their position.<sup>192</sup> Commissioner McGaffigan reminded employees,

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<sup>188</sup> *Id.* at 2. (emphasis added).

<sup>189</sup> Commissioner McGaffigan’s Remarks at the Nuclear Safety Professional Development Program Graduation (September 28, 2006) available at <http://www.nrc.gov/reading-rm/doc-collections/commission/speeches/2006/exm-nspdp-remarks.html>.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

“you can afford such enemies, but you cannot afford to compromise your honor, your personal compass.”<sup>193</sup>

The unprecedented decision by four commissioners – two Democrats, two Republicans – to bring their concerns to the White House is not part of some grand political conspiracy against Chairman Jaczko. It is about upholding their integrity and standing up for the NRC, its employees, and its mission. It reflects a commitment to everything the NRC stands for as well as the reason why Congress has preserved the NRC as an independent, collegial body – to protect against the partisan influences that corrupt and undermine its important mission. Jeffrey Sharkey, who spent more than 11 years working for Commissioner McGaffigan, told the Committee:

I know Commissioner McGaffigan would. . . . be outraged and devastated by the damage done to this fine institution by Chairman Jaczko. Without hesitation he would add his voice to that of Commissioners Svinicki, Apostolakis, Magwood, and Ostendorff in calling for Chairman Jaczko’s removal.<sup>194</sup>

The NRC’s organizational values – integrity, service, openness, commitment, cooperation, excellence, and respect – are more than just buzz words; they define daily life at the Commission. Many organizations have a mission statement or values but few live them quite like the NRC. These values are as much a part of the NRC’s operations as any law, regulation, or standard. For NRC employees, they are a source of pride. The EDO describes two principle reasons why NRC employees have demonstrated such strong support for the agency:

One is an absolute and unabiding belief in the mission of the NRC, and the second is this intrinsic understanding and incorporation of living by a set of values that all 4,000 people exhibit every single day, whether we’re dealing with external stakeholders, licensees, and most importantly with ourselves. There is a sense of trust between NRC staffers that I don’t think exists in many places in the workforce.<sup>195</sup>

Chairmen and Commissioners come and go but the men and women of the NRC who live by these values are the reason that the NRC remains focused on its mission. The current Chairman, through his blatant disregard for the Commission and its core beliefs, is testing this resolve. The NRC has survived thus far but the cracks are forming and all symptoms point to catastrophe.

When four Commissioners and countless staff are concerned about the future of the NRC, the American public should also be worried. Swift, decisive action is desperately needed to restore the integrity of the NRC, its values, and commitment to its core mission – public health and safety.

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<sup>193</sup> *Id.*

<sup>194</sup> Email from Jeffrey Sharkey to Committee Staff (December 9, 2011).

<sup>195</sup> Bill Borchardt, Living the NRC Values Transcript, available at <http://www.nrc.gov/about-nrc/values.html>.