Executive Summary

Overview

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), conducted an investigation into four allegations concerning the NRC Chairman's exercise of his authority under the Reorganization Plan No. 1 of 1980 and the Energy Reorganization Act of 1974. The investigation also addressed allegations concerning the Chairman's interactions with NRC officials and the Chairman's testimony during U.S. House of Representatives and Senate committee hearings in December 2011.

Background

NRC Mission and Structure

NRC was created as an independent agency by the Energy Reorganization Act of 1974 to regulate civilian use of radioactive materials. The act gave the NRC Commission its collegial structure and established areas where each Commission member, including the Chairman, had equal authority, and other areas where the Chairman had unique responsibilities. The act states that each member of the Commission, including the Chairman, has equal responsibility and authority in all decisions and actions of the Commission, full access to all information relating to the performance of his or her duties or responsibilities, and one vote. Action of the Commission is determined by a majority vote of the members present. The act also provides that the Chairman serves as the official spokesman of the Commission and the principal executive officer of the Commission, responsible for exercising the Commission's executive and administrative functions.

In 1979, the most serious nuclear accident in U.S. history occurred at the Three Mile Island nuclear power plant in Pennsylvania. After the accident, a presidential commission and an NRC study recommended that a single administrator should head NRC. However, President Jimmy Carter decided to maintain a commission structure, and he submitted the Reorganization Plan No. 1 of 1980 (Reorganization Plan) to Congress to strengthen the Chairman's role to clarify where agency responsibility resided while retaining the diversity that a commission form of organization offers.

During congressional hearings held prior to enactment of the Reorganization Plan, various concerns were raised, including that (1) the Reorganization Plan would establish a single line of command to the Chairman that would result in "muzzling the staff"; (2) Commission members' access to information "would be constrained, thereby impairing the Commissioners' ability to function effectively"; and (3) a Chairman might use the special powers afforded the position to override the majority will of the Commissioners.

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In response to these and other concerns, President Carter amended his initial plan and on October 1, 1980, the Reorganization Plan, as amended, became effective. The Reorganization Plan, as amended, strengthened the executive and administrative roles of the NRC Chairman, particularly in emergencies. At the same time, it provided that all policy formulation, policy-related rulemaking, and orders and adjudications would remain vested with the full Commission.

Commission Decision Documents

The Commission's primary decisionmaking tool is a written issue paper referred to as a SECY paper. An additional vehicle for Commission decisionmaking is the written exchange of memoranda (COM) between Commissioners. The Commission also receives memoranda from the staff. At times, a staff memorandum may contain a recommendation or seek guidance from the Commission. In that event, the memorandum will be circulated in the COM system as a COMSECY. The Secretary records the results of the Commission action on each SECY Paper and action memorandum (COM or COMSECY) in a Staff Requirements Memorandum (SRM).

Allegations and Findings

Issue 1 Allegation

Following the earthquake and tsunami in Japan, the Chairman exceeded his authority by assuming emergency powers in response to an incident at a foreign facility, Fukushima Dai-ichi, not regulated by NRC. He failed to keep the other Commissioners fully informed about events in Japan and failed to issue a complete and timely report to the Commission on actions taken during the emergency.

Issue 1 Findings

OIG found that NRC Chairman Gregory Jaczko did not exceed his authorities under the Reorganization Plan in leading the agency's response to events in Japan from March 11, 2011, to May 16, 2011, while the NRC's Headquarters Operations Center (HOC) was in "monitoring mode" because his response actions were within the scope of his authorities. The Chairman is authorized to direct NRC's response to emergencies under both Sections 2 and 3 of the Reorganization Plan. Section 2 allows the Chairman to direct the agency's response as NRC's principal executive officer and to communicate to the public about the response as the official Commission spokesman. Section 3 provides special authority for the Chairman to respond to "an emergency concerning a particular facility or materials licensed or regulated by the Commission" without consulting with the Commission on matters that would otherwise require a collegial approach under the Reorganization Plan. Section 3 also gives the Chairman the sole

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authority to declare the existence of a Section 3 emergency. The Chairman did not clarify whether any of his actions were pursuant to his Section 3 authority; however, the Chairman made no unilateral policy decisions affecting NRC licensees in response to events in Japan. Therefore, it appears to OIG that the Chairman's emergency response actions were authorized under his Section 2 authority.

OIG found that while Section 3(a) of the Reorganization Plan states explicitly that a Section 3 emergency pertains to "a particular facility or materials licensed or regulated by the Commission," the NRC General Counsel interpreted that the Chairman could have used this authority to respond to events in Japan, even though Fukushima Dai-ichi Nuclear Power Station is not licensed or regulated by the NRC. The General Counsel based his interpretation of the law partly on a prior General Counsel's interpretation that Section 3 was appropriate for use in the aftermath of the September 11, 2001, terrorist attacks even though there had been no specific event involving a particular facility. OIG notes that while the earlier General Counsel's opinion expanded the use of Section 3 authority, the focus remained on NRC licensed facilities. While the Office of the General Counsel decision on Fukushima extended this authority to non-licensees, the General Counsel acknowledged to OIG that expansion to non-licensees could be debated.

OIG found that the Reorganization Plan does not specifically require the Chairman to declare the existence of a Section 3 emergency. Moreover, OIG did not identify any NRC procedure requiring the Chairman to make a Section 3 declaration, and the Chairman did not make such a declaration. When asked, the Chairman did not respond clearly to specific questions from OIG, a Commissioner, and members of Congress as to whether he was exercising his Section 3 authority. Although the Reorganization Plan does not require the Chairman to declare his use of Section 3 authority, without such a declaration, the Commission does not know for certain whether the Chairman is using that authority and is less able to hold the Chairman accountable for keeping them fully informed or providing a complete and timely report following the emergency.

OIG found that the Chairman made reasonable efforts to keep the Commissioners informed of actions taken during the monitoring mode period. The Chairman informed the Commissioners of actions taken through oral and written status updates and briefings provided to the Commissioners and their staff by the Chairman and by the Executive Team working in the HOC during the monitoring mode period.

OIG found that Section 3(d) of the Reorganization Plan requires the Chairman to render a timely report to the Commission following the conclusion of the emergency, but does not specify the form the report must take or what constitutes a timely report. The legislative history does not elaborate on the type of report or the timing, but notes the purpose is to assist the Commission to formulate or reformulate policies and rules relative to emergencies in general or to particular or general problems that were presented by the specific emergency. Although the Chairman did not state he used his

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Section 3 authority to respond to events in Fukushima, he has never denied the need to fulfill the section 3(d) reporting requirement. Instead, he has maintained that the provision of multiple reports, including the near-term task force report, a report to Congress, and situation reports, collectively met the Reorganization Plan's requirement for a timely after action report. The General Counsel agreed that these reports were in the spirit of the reporting provision and reflected a good faith effort to provide the Commission with the relevant information.

Issue 2 Allegation

The Chairman violated Commission procedures when he directed the Executive Director for Operations (EDO) and Secretary of the Commission (Secretary) to retract an "advance copy" of SECY-11-0093 transmitting the "Near Term Report and Recommendations for Agency Actions Following the Events in Japan." The Chairman then directed the EDO to strike the recommendations in the SECY paper that the EDO had wanted to provide and resubmit the document without staff analysis or recommendations.

Issue 2 Findings

OIG found that the Chairman's actions concerning the withdrawal and resubmission of the revised SECY-11-0093 with the attached near-term task force report did not violate the *Internal Commission Procedures* with regard to "withdrawal of papers submitted to the Commission." Although the procedures do not specifically define what is meant by "withdrawal" of a SECY paper, the Secretary of the Commission interprets this to mean withdrawal of an issue from Commission consideration. After learning the staff had pulled back the first version of SECY-11-0093 submitted on July 12, 2011, the Secretary contacted a Deputy Executive Director for Operations (Deputy EDO) and the Chairman to learn more about the circumstances, and received assurances that the Commission would still vote on the attached task force report recommendations as it had requested in prior Commission direction to the staff (COMGBJ-11-0002) and that the recommendations would be presented as a notation vote paper. Therefore, the Secretary concluded the temporary retraction of SECY-11-0093 did not necessitate a written explanation by staff or polling of Commissioners, and the General Counsel supported the Secretary's interpretation.

OIG found the Chairman's direction to the Deputy EDO not to include the EDO's and Deputy EDO's perspective on implementation of the near-term task force recommendations in SECY-11-0093 was inconsistent with the Commissioners' expectations to receive the staff's written views, analysis, and recommendations as part of SECY papers. The legislative history of the Reorganization Plan establishes that the Commissioners are to have full access to agency information to support their policy decisionmaking and that the Chairman is not to block the flow of information to the Commissioners. Ultimately, the Commissioners were able to consider the information

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that the Chairman ordered retracted from the initially submitted version of SECY-11-0093 as well as information they obtained during communications with senior managers to inform their voting on SECY-11-0093. When questioned by OIG, the General Counsel said that this outcome means the full access requirement was met. However, the Commissioners said they rely on the staff's written input to support their policy decisionmaking and found the final SECY-11-0093 transmittal memorandum to be of no value.

Issue 3 Allegation

During the course of this investigation, Commissioners and senior officials provided examples where they perceived the Chairman attempted to control the content and flow of information to the Commission. OIG examined whether the Chairman's control over matters to be presented to the Commission is in accordance with his authority under the Reorganization Plan No. 1 of 1980.

Issue 3 Findings

OIG found that the Reorganization Plan assigns the Chairman responsibility for "developing policy planning and guidance for consideration by the Commission," but does not define these terms or articulate the limits on the Chairman's authority in this area. Moreover, the legislative history provides conflicting interpretations as to whether the Chairman can direct the staff not to submit written policy proposals to the Commission or alter the information the staff provides in its written policy proposals. While a Senate committee noted the Chairman was to serve only as a conduit to pass information forward, a House committee noted the Chairman was responsible for guiding, developing, and presenting policy proposals and options to the Commission. This lack of clarity results in differing interpretations by different Chairmen as to the extent of their authority to influence and modify the staff's policy proposals prior to submission to the Commission.

OIG found Chairman Jaczko interprets his authority broadly and, at times, attempts to control the flow of information to the Commission. Specifically, the Chairman directed a senior official to change the staff's recommendation in one SECY paper (SECY-11-0118[1]) and to remove the EDO's and Deputy EDO's perspective in another (SECY-11-0093) prior to submission to the Commission. The Chairman also initially directed the staff to stop preparing a paper (SECY-11-0033[2]) that the staff wanted to submit for Commission consideration. The Commissioners disagree with the Chairman's influence over SECY paper content and uniformly expressed a need to receive the staff's

[1] SECY-11-0118, "Alternatives Relating to Issuance of the First Combined License."

[2] SECY-11-0033, "Proposed NRC Staff Approach to Address Resource Challenges Associated With Review of a Large Number of NFPA 805 License Amendment Requests, Policy Issue Notation Vote."

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unaltered, expert recommendations to support their decisionmaking. Two prior NRC Chairmen reported they did not change staff views expressed in SECY papers and if they had a different view than the staff, they expressed it in the voting record. Additionally, President Carter, who submitted the Reorganization Plan to Congress, said the Reorganization Plan does not allow the Chairman to interfere with NRC staff proposals and that the Chairman should present the staff's recommendations as received and articulate his position separately, differing or not, to the Commission.

Issue 4 Allegation

The Chairman directed the Secretary of the Commission not to follow direction provided by a majority of the Commissioners pertaining to revisions to the NRC's *Internal Commission Procedures*. Four Commissioners wanted to finalize revisions to the *Internal Commission Procedures* and directed the Secretary to make changes to a staff requirements memorandum to finalize the revised procedures. However, the Chairman intervened and prevented the Secretary from carrying out the direction provided by the four Commissioners. The Chairman instructed the Secretary not to act on Commission direction and to act at his direction.

Issue 4 Findings

OIG found that Chairman Jaczko initially instructed the Secretary of the Commission not to follow the consensus approach of the four Commissioners concerning moving forward to finalize the revised *Internal Commission Procedures.* The Secretary wanted to issue a COMSECY to the Commission so they could vote on revisions suggested by the General Counsel in a July 5, 2011, memorandum to ensure the procedures aligned with legal requirements. However, while the four Commissioners communicated their support for the Secretary's approach through their chiefs of staff, the communication was not explicit direction to the Secretary to issue a COMSECY. Absent formal written Commission direction, the Chairman did not want her to issue a COMSECY. The Secretary then communicated to the Commissioners that they should inform the Chairman that they wanted a COMSECY. Subsequently, Commissioner William Ostendorff told Chairman Jaczko the Commission was considering a COM to move the *Internal Commission Procedures* forward. Shortly thereafter, on July 21, 2011, the Secretary issued COMSECY-11-0010, requesting Commission review and approval of the General Counsel's suggested revisions. OIG notes that two former Chairmen advised if a majority of Commissioners gave the Secretary direction on how to process a matter, this would have constituted majority direction to proceed.

OIG found that the conflicting direction from the Reorganization Plan, NRC Management Directive 10.137, *Senior Executive Service Performance Management System*, and the Secretary's position description concerning lines of reporting placed the Secretary in a difficult position during her attempt to finalize the *Internal Commission Procedures*. The Reorganization Plan states that the Secretary reports to the

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Commission; however, Management Directive 10.137 assigns the Chairman to serve as the supervising official for the Secretary and the Secretary's position description states that the Secretary reports to the Chairman. The General Counsel noted that the Chairman's supervisory authority was not intended to encroach on the Commission's authorities or functions, but was intended to be included as part of the Chairman's executive and administrative responsibilities. OIG noted that while the Chairman is authorized to provide administrative supervision and oversight of the Secretary, the Secretary must also be responsive to Commission direction concerning policy formulation, rulemaking, and adjudicatory functions, and administrative matters that the Commission determines have a direct effect on the Commission's ability to perform those functions. The contradictory direction the Secretary received from the Chairman versus the four Commissioners during her attempt to finalize the *Internal Commission Procedures* highlights the challenge caused by the inconsistent guidance.

Issue 5 Allegation

The Chairman's interpersonal interactions with NRC staff and Commissioners has created a chilled workplace environment at NRC.

Issue 5 Finding

OIG identified more than 15 examples of interactions between the Chairman and NRC senior executives and Commissioners where the Chairman's behavior was not supportive of an open and collaborative work environment. NRC holds licensees accountable for behavior by senior managers that is not conducive to an environment where employees feel encouraged to raise concerns. Although no one interviewed said they would hesitate to bring a safety matter to the Chairman's attention, NRC senior executives and Commissioners provided specific examples of what they perceived as intimidating and bullying tactics by Chairman Jaczko so that they would be influenced to side with the Chairman's opinion despite their own judgments. The Chairman says he welcomes disagreement and challenges the staff for the good of the agency. However, many of the people who personally experienced or witnessed these interactions did not perceive these exchanges in a positive manner. The impact is that some senior officials avoid interactions with the Chairman and may limit what they tell the Chairman, which is contradictory to both NRC's values and an open and collaborative work environment.

Issue 6 Allegation

The Chairman provided inaccurate testimony before the U.S. House of Representatives Committee on Oversight and Government Reform and Senate Environment and Public Works Committee hearings held in December 2011.

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Issue 6 Finding

OIG found the Chairman's December 2011 testimony before the House and Senate committees was inconsistent, in five areas, with testimony provided to OIG by NRC senior officials during this investigation.

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