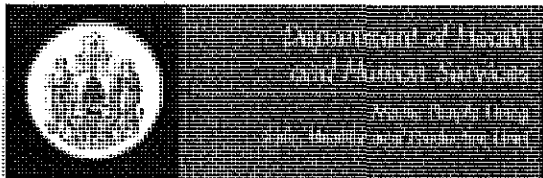


# MAINE STATE LEGISLATURE

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Fred E. LaRue, Governor


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November 4, 2011

**MEMORANDUM**

**TO:** Senator Kevin Raye, President of the Senate, and Representative Robert Nutting, Speaker of the House

**FROM:** Mary Mayhew, Commissioner   
Department of Health and Human Services

**SUBJECT:** State Nuclear Safety Inspector's July 2011 Monthly Report to the Legislature on the Interim Spent Fuel Storage Facility in Wiscasset, Maine

Legislation enacted in the spring of 2008 requires the State Nuclear Safety Inspector to provide monthly reports to the President of the Senate, Speaker of the House, the U.S. Nuclear Regulatory Commission, and Maine Yankee. The report focuses on activities at the site and includes highlights of the national debate on storing and disposing the used nuclear fuel.

The enclosed report provides the information required under Title 22 of the Maine Revised Statutes Annotated §666, as enacted under Public Law, Chapter 539, in the second regular session of the 123<sup>rd</sup> Legislature.

Should you have questions about its content, please feel free to contact Mr. Patrick J. Dostie, State Nuclear Safety Inspector, at 287-6721.

pjd

Enclosure

- cc: Vonna Ordaz, U.S. Nuclear Regulatory Commission
- Monica Orendi, U.S. Nuclear Regulatory Commission, Region I
- James Connell, Site Vice President, Maine Yankee
- Katrin Teel, Senior Policy Advisor, Governor's Office
- Sheila Pinette, DO, Director, Maine Center for Disease Control and Prevention
- Patricia W. Aho, Acting Commissioner, Department of Environmental Protection
- Richard Davies, Maine Public Advocate
- Major Christopher Grotton, Special Services Unit, Maine State Police
- Nancy Beardsley, Director, Division of Environmental Health
- Jay Hyland, PE, Manager, Radiation Control Program



Paul H. InFigo, Governor

Mary C. Mayhew, Commissioner

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August 9, 2011

To: Honorable Mr. Kevin L. Raye, President of the Senate  
Honorable Mr. Robert W. Nutting, Speaker of the House

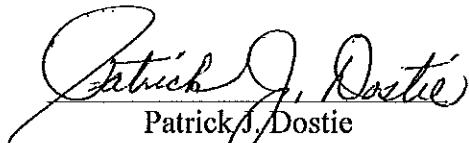
Subject: State Nuclear Safety Inspector Office's July 2011 Monthly Report to the Maine Legislature

As part of the State's long standing oversight of Maine Yankee's nuclear activities, legislation was enacted in the second regular session of the 123<sup>rd</sup> and signed by Governor John Baldacci requiring that the State Nuclear Safety Inspector prepare a monthly report on the oversight activities performed at the Maine Yankee Independent Spent Fuel Storage Installation facility located in Wiscasset, Maine.

Enclosed please find the Inspector's July 2011 monthly activities reports. The national highlights for July include:

- The Washington, D.C. Circuit Court of Appeals dismissed as premature the lawsuit that argued the Obama Administration acted illegally in shutting down the Yucca Mountain Project,
- The House Appropriations Committee approves funding of \$45 million for the Yucca Mountain license application,
- Three nuclear utilities reach multi-million settlements with the U.S. Department of Energy over the forced storage of spent nuclear fuel,
- The House passed a \$30.6 billion energy bill that has a provision blocking the Administration from closing the Yucca Mountain Project in Nevada,
- Aiken County, South Carolina, the Tri-City business leaders from Hanford, Washington, the states of South Carolina and Washington, the National Association of Regulatory Utility Commissioners, and Nye County, Nevada filed a petition for writ of mandamus with the U.S. Court of Appeals for the District of Columbia Circuit against the U.S. Nuclear Regulatory Commission (NRC) and Chairman Jaczko requesting the Court to compel the NRC to issue a final merits-based decision approving or disapproving the Department of Energy's application for a repository construction authorization at Yucca Mountain in Nevada,
- The Blue Ribbon Commission on America's Nuclear Future issued its draft report promoting seven key recommendations for the disposal of the nation's civilian and defense-related spent nuclear fuel,

Additional information is available on the Radiation Control Program's website at <http://www.maineradiationcontrol.org> under the nuclear safety link. Should you have questions about the reports' contents, please feel free to contact me at 207-287-6721, or e-mail me at [pat.dostie@maine.gov](mailto:pat.dostie@maine.gov).

  
Patrick J. Dostie  
State Nuclear Safety Inspector

Enclosure

cc:

Vonna Ordaz, U.S. Nuclear Regulatory Commission

Monica Orendi, U.S. Nuclear Regulatory Commission, Region I

James Connell, Site Vice President, Maine Yankee

Mary Mayhew, Commissioner, Department of Health and Human Services

Sheila Pinette, DO, Director, Maine Center for Disease Control and Prevention

Katrin Teel, Senior Policy Advisor, Governor's Office

Patricia W. Aho, Acting Commissioner, Department of Environmental Protection

Richard Davies, Maine Public Advocate

Major Christopher Grotton, Special Services Unit, Maine State Police

Nancy Beardsley, Director, Division of Environmental Health

Jay Hyland, PE, Manager, Radiation Control Program

# State Nuclear Safety Inspector Office

## July 2011 Monthly Report to the Legislature

### Introduction

As part of the Department of Health and Human Services' responsibility under Title 22, Maine Revised Statutes Annotated (MRSA) §666 (2), as enacted under Public Law, Chapter 539 in the second regular session of the 123<sup>rd</sup> Legislature, the foregoing is the monthly report from the State Nuclear Safety Inspector.

The State Inspector's individual activities for the past month are highlighted under certain broad categories, as illustrated below. Since some activities are periodic and on-going, there may be some months when very little will be reported under that category. It is recommended for reviewers to examine previous reports to ensure connectivity with the information presented as it would be cumbersome to continuously repeat prior information in every report. Past reports are available from the Radiation Control Program's web site at the following link: [www.maineradiationcontrol.org](http://www.maineradiationcontrol.org) and by clicking on the nuclear safety link in the left hand margin.

Commencing with the January 2010 report the glossary and the historical perspective addendum are no longer included in the report. Instead, this information is available at the Radiation Control Program's website noted above. In some situations the footnotes may include some basic information and may redirect the reviewer to the website.

### Independent Spent Fuel Storage Installation (ISFSI)

During July the general status of the ISFSI was normal. There were no instances of spurious alarms due to environmental conditions.

There were no fire or security related impairments. However, there were 11 security events logged for the month. Seven were due to transient camera issues due to environmental conditions. One was associated with on-going security upgrades with the remaining three due to ongoing security computer maintenance. All the security computer events were very brief.

There were 5 condition reports<sup>1</sup> (CR) for the month of July and they are described below.

1<sup>st</sup> CR: Documented where the testing to the security computer caused a brief loss of some input parameters.

2<sup>nd</sup> CR: Was written for the back-up security vendor not following an established protocol.

3<sup>rd</sup> and 4<sup>th</sup> CRs: Involved security computer issues. The computer was replaced with its back-up.

5<sup>th</sup> CR: Was issued on key inventory. Since not all the keys are required to be inventoried, some confusion existed over the perceived inconsistency.

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<sup>1</sup> A condition report is a report that promptly alerts management to potential conditions that may be adverse to quality or safety. For more information, refer to the glossary on the Radiation Program's website.

## Other ISFSI Related Activities

1. On July 12<sup>th</sup> Maine Yankee notified the Nuclear Regulatory Commission that all 60 canisters storing spent fuel were now registered to the cask manufacturer's Amendment 5 instead of the previous Amendment 2. With the change Maine Yankee is required to abide by the cask manufacturer's Final Safety Analysis Report, revision 9 dated November 2010.

## Environmental

The results for the State's recent quarterly field replacement of its radiation monitoring devices, thermoluminescent dosimeters<sup>2</sup> (TLDs), near the ISFSI will be provided in the August monthly report.

## Groundwater Monitoring Program

On July 7<sup>th</sup>, after a number of e-mail exchanges between the Department of Environmental Protection (DEP) and Maine Yankee, Maine Yankee agreed to leave two of the radiation monitoring wells as part of its chemical sampling program commitment. The two wells will only be used for water level measurements going forward. At the same time Maine Yankee notified the DEP that the remaining rad monitoring wells will be closed before the end of July.

## Other Newsworthy Items

1. On July 1<sup>st</sup> the Department of Energy's National Transportation Stakeholders Forum (NTSF) sent a letter to all transportation stakeholders listing the major topics for ad hoc working groups and webinars for the next year. The lists were compiled from the second annual NTSF meeting held in May. Three of the webinar topics are of great interest to the State of Maine. They are the
  - President's Blue Ribbon Commission's Draft Recommendations on nuclear waste management
  - Electric Power Research Institute and the federal government's Extended Used Fuel Storage Study
  - Greater Than Class C Low Level Waste Disposal

All three webinars will provide insight on what the future holds for the spent fuel storage facility in Wiscasset. The NTSF is the mechanism by which the Department of Energy communicates at a national level with states and tribes about the Department's shipments of radioactive wastes and materials.

2. On July 1<sup>st</sup> the Washington, D.C. Circuit Court of Appeals dismissed the lawsuit that argued the Obama Administration acted illegally in shutting down the Yucca Mountain Project. In a unanimous decision the three judge panel ruled that the lawsuit was premature until the Nuclear Regulatory Commission (NRC) makes a final decision. However, Chief Judge Sentelle did say "Should the Commission fail to act within the deadline specified, petitioners would have a new cause for action. We will not permit an agency to insulate itself from judicial review by refusing to act." The expected date for this decision is September 15<sup>th</sup> since the license application was formally registered at the NRC in September of 2008 and the NRC is required by the Nuclear Waste Policy

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<sup>2</sup> Thermoluminescent Dosimeters (TLD) are very small, passive radiation monitors requiring laboratory analysis. For more information, refer to the glossary on the Radiation Program's website.

Act to either approve or disapprove the Yucca Mountain license application. As Judge Kavanaugh stated, "The President does not have the final word in the Executive Branch about whether to terminate the Yucca Mountain project. For now, therefore, the ball in this case rests in the Executive Branch not with the President, but rather with the Nuclear Regulatory Commission."

3. On July 7<sup>th</sup> William Ostendorff was sworn in to a five year term as a Commissioner to the Nuclear Regulatory Commission (NRC). Ostendorff previously served on the Commission until his term ended on June 30<sup>th</sup>. He was reconfirmed by the Senate on June 30<sup>th</sup>. A copy of the NRC news release is attached.
4. On July 8<sup>th</sup> the Nuclear Waste Strategy Coalition sent a letter to the Chairs of the Subcommittees on Energy and Power and Environment and Economy and their Ranking Members expressing their discontent with the Department of Energy's (DOE) systematic dismantling of the Yucca Mountain Project, with the DOE's demand for ratepayers to continue funding the Nuclear Waste Fund despite DOE's shuttering of the Yucca Mountain Project, and with the manipulation of Chairman Jaczko of his fellow Nuclear Regulatory Commissioners on the termination of the NRC's Yucca Mountain licensing review process,. A copy of the letter is attached.
5. On July 8<sup>th</sup> Xcel Energy of Minnesota announced that they had reached a \$100 million settlement with the Department of Energy through 2008 on the storage of used nuclear fuel at their Prairie Island and Monticello nuclear power plants. In addition, the settlement also provides about another \$100 million to cover the actual costs incurred to store the spent fuel from 2009 through 2013. After 2013 future storage costs could be subject to litigation. A copy of the news release is attached.
6. On July 8<sup>th</sup> the Nuclear Waste Strategy Coalition sent a letter to the Chair and Ranking Member of the House's Appropriations Subcommittee on Energy and Water Development praising the Subcommittee's actions to reinstate \$25 million from the Nuclear Waste Fund for the nation's nuclear waste disposal program, to recommend that the nuclear spent fuel stranded at decommissioned sites will be the first to removed and to appropriate \$10 million to the Nuclear Regulatory Commission to continue their review of the Yucca Mountain Project. A copy of the letter is attached.
7. On July 8<sup>th</sup> the House Committee on Energy and Commerce sent a letter to Chairman Jaczko of the Nuclear Regulatory Commission (NRC) on their investigation of the NRC's decision making process relative to the Yucca Mountain license application. The letter expressed concern over the Chairman's and other NRC staff's involvement "in the alteration of the original language in the professional staff's draft of the Technical Evaluation Report" to replace Volume III of the Safety Evaluation Report. A copy of the letter is attached.
8. On July 13<sup>th</sup> the Nuclear Waste Strategy Coalition (NWSC) held its first bi-weekly conference call to update its members on the White House's policy on Yucca Mountain and congressional activities relative to the FY 2012 appropriations, the new legislation introduced in the Senate to create two consolidated interim storage facilities, and the House's investigation of Chairman Jaczko of the Nuclear Regulatory Commission (NRC). Additional information was provided on the reconfirmation of NRC Commissioner Ostendorff to a five year term, the Xcel Energy settlement on spent fuel storage costs and the July 1<sup>st</sup> decision of the D.C. Circuit Court of Appeals dismissing the Yucca Mountain lawsuit until the NRC acts.
9. On July 13<sup>th</sup> Representative Heck from Nevada introduced an amendment to the House's Appropriations Bill to divert the \$25 million earmarked for the Department of Energy to support its Yucca Mountain license application before the Nuclear Regulatory Commission to research and

development on fuel reprocessing and recycling technologies. His amendment provided \$20 million for research with the remaining \$5 million split evenly between the State of Nevada and local counties. The amendment did not pass the House as it was ruled out of order.

10. On July 14<sup>th</sup> the House Appropriations Committee approved an amendment to increase the FY 2012 funding from \$10 Million to \$20 million for the Nuclear Regulatory Commission to complete its review of the Yucca Mountain license application.
11. On July 14<sup>th</sup> the U.S. Nuclear Waste Technical Review Board (NWTRB) sent a letter to the Chairs of the Blue Ribbon Commission's Reactor and Fuel Cycle Technology Subcommittee recommending that any evaluation of advancements in nuclear reactor technology also consider the potential impacts on waste streams and final waste forms for disposal. The Board also concurred with the Subcommittee's conclusion that there were no current or foreseeable technologies that would alter the nation's waste management challenge for the next several decades and the requirement for a geologic repository to address the stockpiling of the used nuclear fuel. A copy of the letter is attached.
12. On July 15<sup>th</sup> the House passed a \$30.6 billion energy bill that has a provision blocking the Administration from closing the Yucca Mountain Project in Nevada.
13. On July 15<sup>th</sup> Energy Northwest issued a news release indicating that the U.S. Federal Court of Claims awarded the company \$48.7 million in damages associated with the construction of a used fuel storage facility at their Columbia Power Plant just north of Richland, Washington. The award covered costs incurred through August 2006. A copy of the news release is attached.
14. On July 15<sup>th</sup> Consumers Energy of Michigan announced that the federal government will pay \$120 million over spent nuclear fuel to settle its 2002 lawsuit filed against the Department of Energy for breach its contract with the company.
15. On July 15<sup>th</sup> the Nebraska Public Power District (NPPD) announced that it had reached a settlement with the U.S. Department of Energy (DOE) over its costs to construct and operate an on-site storage facility for used nuclear fuel at the Cooper Nuclear Station. The settlement has resulted in an initial payment of \$60.5 million to cover NPPD's costs through 2009. Storage costs for 2010 through 2013 will be submitted annually to the DOE. A copy of the press release is attached.
16. On July 19<sup>th</sup> the European Union (EU) ministers agreed to a pan-European plan for disposing of the used nuclear fuel from the EU's 143 nuclear reactors. The new rules force national nuclear authorities to draw up disposal plans by 2015. Currently, the member states that use nuclear power store their spent nuclear fuel in secure bunkers or warehouses.
17. On July 21<sup>st</sup> the Nuclear Regulatory Commission (NRC) issued a news release indicating that they had published the first of three technical evaluation reports (TER) on the agency's Yucca Mountain license application review. The 723 page TER described the NRC staff's technical evaluation of the Department of Energy's (DOE) Safety Analysis Report and provided technical insights on the application of performance assessment in the context of geologic disposal. The TER does not include conclusions as to whether or not the DOE satisfied the Commission's regulations. The other two TERs are expected to be completed by September 30<sup>th</sup>. A copy of the news release is attached.
18. On July 22<sup>nd</sup> the Chairman Jaczko of the Nuclear Regulatory Commission (NRC) responded to the Chair of the House's Committee on Energy and Commerce on their request for a reversible Volume III of the NRC's Safety Evaluation Report (SER). Chairman Jaczko clarified some



misunderstandings on the status of the SER and provided other documents for the Committee's review. Since the documents had not been publicly released, Chairman Jaczko requested that the Committee not release them. A copy of the letter is attached.

19. On July 22<sup>nd</sup> the Nuclear Waste Strategy Coalition updated the status of judgments and settlements on the 70+ lawsuits filed by the nation's nuclear utilities against the federal government for breaching their contracts and not taking possession of the spent nuclear fuel by January 31, 1998 as prescribed by the Nuclear Waste Policy Act of 1982 as amended. The \$75.8 million award to Maine Yankee was increased last year by the Courts to \$81.9 million. A copy of the list of judgments and settlements is attached.
20. On July 26<sup>th</sup> the Nuclear Regulatory Commission's (NRC) Licensing Support Network (LSN) Administrator notified the NRC's Atomic Safety and Licensing Board that the LSN will cease operations by August 5<sup>th</sup>. The LSN was created as part of the NRC's review of the Department of Energy's Yucca Mountain license application. After the shutdown the public or other interested parties will not be able to access the documents. However, the parties involved in the Yucca Mountain licensing review will control their own documentary material. A copy of the memorandum is attached.
21. On July 27<sup>th</sup> the Nuclear Waste Strategy Coalition (NWSC) held its second bi-weekly conference call to update its membership on the congressional activities with the FY 2012 appropriations and new legislation introduced in the Senate to create two consolidated interim storage facilities, the judgments and lawsuits settled by the federal government on spent fuel storage costs, the start of the release of technical evaluation reports from the Nuclear Regulatory Commission (NRC) on the Yucca Mountain Project, the July 1<sup>st</sup> decision of the D.C. Circuit Court of Appeals dismissing the Yucca Mountain lawsuit until the NRC acts, and the soon to be released Blue Ribbon Commission draft report.
22. In July Energy Northwest, which was awarded \$48.7 million earlier this month by the U.S. Court of Federal Claims, filed a second lawsuit seeking damages for its costs of storing spent nuclear fuel since August of 2006.
23. On July 29<sup>th</sup> Aiken County, South Carolina, the Tri-City business leaders from Hanford, Washington, the states of South Carolina and Washington, the National Association of Regulatory Utility Commissioners, and Nye County, Nevada filed a petition for writ of mandamus with the U.S. Court of Appeals for the District of Columbia Circuit against the U.S. Nuclear Regulatory Commission (NRC) and Chairman Jaczko requesting the Court to compel the NRC to issue a final merits-based decision approving or disapproving the Department of Energy's application for a repository construction authorization at Yucca Mountain in Nevada. The basis for the lawsuit was that NRC action on the license application was unreasonably delayed. According to the Nuclear Waste Policy Act of 1982 as amended the NRC has three years to act on Department of Energy's license application to construct a repository at Yucca Mountain.
24. On July 29<sup>th</sup> the Blue Ribbon Commission (BRC) on America's Future submitted its draft report to the Secretary of Energy. The Commission's findings and conclusions present an initial set of recommendations for public review and input. There were seven BRC key recommendations:
  - A new consent-based approach to siting
  - A new organization to implement the waste management program
  - Access to (*and use of*) utility waste disposal fees for their intended purpose
  - Prompt efforts to develop a new permanent geologic disposal facility

- Prompt efforts to develop one or more consolidated interim storage facilities
- Support for advances in nuclear energy technology and for workforce development
- Active U.S. leadership in international efforts to address safety, non-proliferation and security concerns

The fifth recommendation is a major point for moving spent fuel out of Maine. Also embodied in this recommendation is the BRC's supplemental recommendation that spent fuel currently stored at decommissioned reactor sites should be first in line for transfer to a consolidated interim storage facility. The BRC will hold four public meetings across the country for public input prior to submitting its final report to the Secretary of Energy in January of 2012. A copy of the cover letter is attached.

### *Other Related Topics*

1. On June 20<sup>th</sup> the House Committee on Energy and Commerce issued several letters to selected Nuclear Regulatory Commission Staff that were intimately involved in the review of the NRC Yucca Mountain license application. The letter provided guidance on the Committee's expectations for testifying before their Subcommittee on Environment and Economy. The letters were sent to the Director of the Office of Nuclear Material Safety and Safeguards (NMSS), the Acting Director of the Office of Nuclear Material Safety and Safeguards, the Acting Director of the Division of High-Level Waste Repository Safety, Senior Project Manager of the Division of High-Level Waste Repository Safety, and the Branch Chief of the Division of High-Level Waste Repository Safety. Since all the letters are the same one copy is attached. Also included are the testimonies of the NRC staff. The testimonies depicted a major discord between NRC's senior management's position as outlined by the Director of NMSS and the indictment provided by the remaining staff against senior NRC management and their handling of the Yucca Mountain license application. The testimonies illustrated to what extent senior management bowed under pressure from the NRC Chairman's directives to shut down the NRC's review of the Yucca Mountain license application.
2. On June 29<sup>th</sup> the Sustainable Fuel Cycle Task Force (SFCTF) sent a letter to the Co-Chairs of the Blue Ribbon Commission on America's Nuclear Future expressing their long held belief on the technical feasibility of the Yucca Mountain repository as illustrated in the House Science, Space and Technology Committee Report, "Yucca Mountain: The Administration's Impact on U.S. Nuclear Waste Management Policy". In light of the findings of the House Committee's Report the SFCTF science panel requested that the Blue Ribbon Commission recommend the Yucca Mountain site as an alternative solution to the Nation's nuclear waste management program. A copy of the letter is attached.
3. On June 30<sup>th</sup> the U.S. Nuclear Waste Technical Review Board (NWTRB) sent a letter to the Chairs of the Blue Ribbon Commission's Disposal Subcommittee expressing their concurrence with the Subcommittee's three key draft recommendations on organizational form, funding and siting strategy. The letter further expanded on these topics and how well they correlated with the NWTRB's own conclusions in their June reports submitted to Congress and the Secretary of Energy. A copy of the letter is attached.
4. On June 30<sup>th</sup> the U.S. Nuclear Waste Technical Review Board (NWTRB) sent a second letter to the Chairs of the Blue Ribbon Commission's Transportation and Storage Subcommittee commenting on four of the Subcommittee's recommendations. The NWTRB highlighted other challenges that the Subcommittee should consider and incorporate in their final report. For example, although the recommendation to expeditiously construct a consolidated interim storage facility is a laudable one,

siting such a facility without an integrated waste management plan was not recommended. A copy of the letter is attached.

5. On June 30<sup>th</sup> Senator Lisa Murkowski of Alaska introduced legislation to provide for the safe and secure safe storage of the nation's used nuclear fuel stockpile. The bill was co-sponsored by Senator Mary Landrieu of Louisiana. The bill, S. 1320 Nuclear Fuel Storage Improvement Act of 2011, would create two federal interim storage repositories to centralize spent nuclear fuel and provide financial incentives for state and local governments. A copy of the Act is attached.



# NRC NEWS

U.S. NUCLEAR REGULATORY COMMISSION

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No. 11-125

July 7, 2011

## WILLIAM C. OSTENDORFF SWORN IN AS COMMISSIONER OF THE U.S. NUCLEAR REGULATORY COMMISSION FOR A SECOND TERM

William C. Ostendorff was sworn in as a Commissioner of the U.S. Nuclear Regulatory Commission (NRC) July 7 to a five-year term ending on June 30, 2016.

Ostendorff previously served on the Commission for 15 months, completing a term that ended June 30.

"I welcome Bill Ostendorff back on the Commission at a time when the NRC faces many crucial issues, including the aftermath of the Fukushima event in Japan," said Chairman Gregory B. Jaczko. "It is important in these times for the Commission to be fully staffed, and Commissioner Ostendorff brings a wealth of experience and expertise to our work."

"There are many important issues facing the NRC and I am looking forward to working with my colleagues on the Commission to address these issues and to meet our safety mission," said Ostendorff.

Ostendorff has a distinguished career as an engineer, legal counsel, policy advisor, and naval officer. Before joining the NRC, Ostendorff served as the Director of the Committee on Science, Engineering and Public Policy and as Director of the Board on Global Science and Technology at the National Academies.

Ostendorff came to the National Academies after serving as Principal Deputy Administrator at the National Nuclear Security Administration from April 2007 until April 2009. From 2003 to 2007, he was a member of the staff of the House Armed Services Committee. There, he served as counsel and staff director for the Strategic Forces Subcommittee with oversight responsibilities for the Department of Energy's Atomic Energy Defense Activities as well as the Department of Defense's space, missile defense and intelligence programs.

Ostendorff was an officer in the United States Navy from 1976 until he retired in 2002 in the grade of captain. During his naval career, he commanded an attack submarine, an attack submarine squadron and served as Director of the Division of Mathematics and Science at the United States Naval Academy.

###

News releases are available through a free *listserv* subscription at the following Web address: <http://www.nrc.gov/public-involve/listserver.html>. The NRC homepage at [www.nrc.gov](http://www.nrc.gov) also offers a SUBSCRIBE link. E-mail notifications are sent to subscribers when news releases are posted to NRC's website.

**Executive Committee Officers:**

David Wright, Chairman  
Vice Chairman, SC Public Service Commission

Renze Hoeksema, Vice Chairman  
Director of Federal Affairs, DTE Energy

David Boyd, Membership  
Commissioner, MN Public Utilities Commission

Robert Capstick, Finance  
Director of Government Affairs, Yankee Atomic/Connecticut Yankee

Greg White, Communications  
Commissioner, MI Public Service Commission



July 8, 2011

Letter sent by facsimile

The Honorable Edward Whitfield  
Chairman  
Subcommittee on Energy and Power  
House Energy and Commerce Committee  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Bobby Rush  
Ranking Member  
Subcommittee on Energy and Power  
House Energy and Commerce Committee  
United States House of Representatives  
Washington, D.C. 20515

The Honorable John Shimkus  
Chairman  
Subcommittee Environment and Economy  
House Energy and Commerce Committee  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Gene Green  
Ranking Member  
Subcommittee Environment and Economy  
House Energy and Commerce Committee  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairmen Whitfield and Shimkus and Ranking Members Rush and Green:

Taking on and investigating a public policy issue, the termination of the nuclear waste disposal program (Program) by the Department of Energy (DOE) without Congressional approval, and investigating the Nuclear Regulatory Commission (NRC) lack of compliance with its statutory mandate, to resume the Yucca Mountain license application, is the right thing to do. If not now, then when?

While the Department of Energy's (DOE) systematically dismantled the Office of Civilian Radioactive Waste Management, it continues to collect fees from the nation's rate payers. The Program is self-sustained through the Nuclear Waste Fund (NWF), funded by the rate payers from 41 states, estimated to be paying more than \$770 million annually through their electric bills. With interest credits, the Fund earns annually more than \$1.1 billion.

During the June investigations, Chairman Shimkus questioned how the funds that were appropriated from the NWF through the fiscal year (FY) 11 Continuing Resolutions (CRs) were spent since DOE terminated the Program. The last Summary of Program Financial and Budget Information report issued by DOE was January 31, 2010. Consequently, we are uninformed of the amount of current annual fees collected and paid into the NWF and who has received funds from the NWF in the FY 11 CRs. In past years, the DOE updated and issued this document on a regular basis showing NWF fees receipts, including interest earned, and the Program's expenditure.

To add insult to injury, DOE has rejected requests by state utility regulators and local utility companies to voluntarily suspend the collection of fees since it has closed down the Yucca Mountain project. The nation's rate payers have already invested \$15 billion for the scientific research and technology studies carried out at the Yucca Mountain site, and have paid more than \$37 billion, including interest, into the NWF, with nothing in return. These same rate payers will now be funding indefinite on-site storage facilities that are scattered throughout this nation if the DOE and NRC continue to play politics over policy.

The DOE's failure to fulfill its statutory and contractual obligations and Congress' failure to carry out its mandate under the 1982 Nuclear Waste Policy Act, (NWPA), is burdening U.S. tax payers with additional liabilities currently estimated as high as \$50 billion. Seventy-one breach-of-contract claims have been filed against the DOE since 1998, already resulting in more than \$1.2 billion in damages awards from the Judgment Fund. This amount does not include the more than \$190 million in litigation expenses the Department of Justice is incurring to defend these cases. Moreover, these estimates do not include the additional \$500 million to \$1 billion a year in damages if spent nuclear fuel and high-level radioactive waste is still stranded at commercial nuclear plant sites after 2020.

These investigations that are being conducted by the Subcommittees are an opportunity to resolve problems in the foreseeable future and an opportunity to do something good for our nation. They provide a clear picture of Chairman Jaczko's actions to subvert the NRC Commissioners votes that they may have already taken on the Atomic Safety License Board's June 29, 2010 unanimous decision, rejecting the DOE's request to withdraw with prejudice its Yucca Mountain license application, and to withhold public disclosure of the Safety Evaluation Report (SER), Volume 3, that contains 30 years of technical, scientific and environmental work carried out at the Yucca Mountain permanent repository.

The July 1, 2011, U.S. Court of Appeals for the District Circuit decision points out that the NWPA requires the NRC to comply with its statutory mandate to resume the review of the Yucca Mountain license application. In case Chairman Jaczko does not comply with the Court's decision, we hope that one of your Committees will release the **SER that was signed off by the NRC's General Counsel**. Such an action will indicate Congress' resolve to ensure that the statutory requirements set forth in the NWPA, are being adhered to regardless of adverse actions that are being carried out by the DOE and NRC Chairman Jaczko.

Such actions being carried out both by the DOE and NRC are imprudent and are costing the nation's electric ratepayers and taxpayers even more money given the Administration has no "Plan B," except to strand spent nuclear fuel and high level radioactive waste at 121 commercial, decommissioned and defense sites in 39 states for an indefinite period, and to create a Blue Ribbon Commission (BRC).

As you are aware, Secretary of Energy Chu provided direction to the BRC that Yucca Mountain is "off the table" – despite the fact that the BRC's charter contains no such restriction. There is clearly no justification for Secretary Chu's admonition other than politics and the desire on the part of the current Administration to avoid further embarrassment over its actions. The intent to cancel the Yucca Mountain Project and the manner in which it was carried out have done considerable harm to our country and will continue to adversely affect us.

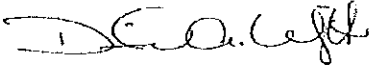
We find it ironic, that while Secretary Chu was a Director at Livermore Berkeley National Laboratory, he signed an August 2008 report which stated ... *"confidence can be achieved by continuing the licensing of a geologic repository at Yucca Mountain and enabling the continued interim storage of used nuclear fuel in dry casks and fuel pools."* Therefore, the attempt to terminate the Yucca Mountain Project is over "political policy" rather than "scientific findings and the rule of law."

The technical merit of the Yucca Mountain site is an issue for the NRC to determine, and it is not an issue the BRC should address. However, the BRC has an obligation to consider all option, including Yucca Mountain, for the storage and disposal of spent nuclear fuel and high-level radioactive waste. The way the Yucca Mountain Project was systematically dismantled by the Administration, and the way Congress failed to address its' own legislation is further evidence that the BRC needs consider Yucca Mountain as an option. The storage and disposal of spent nuclear fuel and high-level radioactive waste and its implications on future project(s) are fundamental issues that must be considered, and dealt with, by the BRC. Doing anything less would be an abrogation of their responsibility to the American people, who have paid \$5 million from the NWF to ensure the BRC's review is "comprehensive, open and inclusive."

We were encouraged that Nye County, Nevada, officials were included in the June hearings. It is stated on a regular basis that communities and stakeholders, particularly those in Nevada, oppose the Yucca Mountain project. To the contrary, this project is supported and welcomed by several local communities surrounding the Yucca Mountain Project in Nevada.

The NWSC is a diverse and an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 45 member organizations in 32 states. The primary focus by the NWSC is to ensure that DOE and Congress carry out the principles outlined in the 1982 Nuclear Waste Policy Act, as amended – protect ratepayer payments made into the Nuclear Waste Fund; ensure that the nuclear waste disposal program is appropriately funded on an annual basis; and the removal of spent nuclear fuel and high-level radioactive waste currently stranded at 121 commercial, defense and decommissioned sites in 39 states.

Respectfully yours,



David Wright  
Commissioner, South Carolina Public Service Commission, and  
Chairman, Nuclear Waste Strategy Coalition

- C: The President of the United States.  
The Honorable John Boehner, The Speaker of the House of Representatives.  
The Honorable Steven Chu, Secretary of Energy.  
United States Senate.  
Governors with stranded SNF and HLRW in their state.  
The House Appropriations Committee.  
The House Energy and Commerce Committee.  
The Honorable Darrell Issa, Chairman, House Oversight and Government Reform Committee.  
The Honorable Peter Lyons, Assistance Secretary for Nuclear Energy, Department of Energy.  
Mr. David Zabransky, Acting Principal Director, DOE/OCRWM.



**NEWS RELEASE**

Xcel Energy Media Relations  
414 Nicollet Mall  
Minneapolis, MN 55401  
(612) 215-5300  
www.xcelenergy.com

July 8, 2011

**Xcel Energy, government settle used fuel storage lawsuits**

*\$100 million-plus to be returned to NSP customers in five states*

MINNEAPOLIS – Xcel Energy announced today it has reached a settlement with the federal government regarding costs incurred by Northern States Power Co. and its customers because of the Department of Energy's failure to begin removing used fuel from the company's nuclear plant sites by a 1998 deadline.

Under the settlement, the federal government will pay approximately \$100 million for used fuel storage costs at Prairie Island and Monticello nuclear generating plants incurred through 2008. The federal government also will pay costs incurred from 2009 through 2013 related to the DOE's failure to remove used fuel.

The money will be returned to NSP customers in Minnesota, Wisconsin, North Dakota, South Dakota and Michigan. Xcel Energy will make appropriate regulatory filings in the coming weeks that will address the best means of returning the proceeds to customers.

"This is a good outcome for our customers," said Judy Pofert, president and CEO of Northern States Power Co.-Minnesota, an Xcel Energy company. "It compensates our customers for costs already incurred because of the federal government's delays and provides a timely means for recovering future costs."

Since 1994, NSP has been an industry leader in seeking to compel the federal government through legal action to comply with the Nuclear Waste Policy Act of 1982.

"This settlement will not alter our efforts to pressure the federal government to fulfill its obligations under the Nuclear Waste Policy Act to find a long-term solution for waste disposal outside of Minnesota," Pofert said. "Xcel Energy will continue to press for federal action to remove the waste from plant sites and is committed to working with our stakeholders to this end."

The settlement resolves litigation in two cases Xcel Energy brought against the federal government. The first case, decided by the Court of Federal Claims in September 2007, was on appeal, and the second case was scheduled to go to trial in the Court of Federal Claims this month.

--MORE--



## Used fuel storage settlement – Page 2

The government's first payment under the settlement of nearly \$100 million addresses costs incurred through 2008. The settlement also provides for timely reimbursement for the actual costs incurred for used fuel storage between 2009 and 2013. Xcel Energy expects those costs will total another roughly \$100 million that would be paid over the next four years. The settlement does not address costs for used fuel storage after 2013; such costs could be the subject of future litigation.

“We worked hard from the onset of this litigation to achieve the best remedy for our customers, and this settlement will provide them with both certainty and substantial economic relief while ending nearly two decades of costly, protracted litigation,” Pofert said. “We look forward to working with our state commissions on plans to return these benefits to our customers in a timely fashion.”

Xcel Energy's lawsuits were among 74 filed by utilities against the federal government alleging partial breach of contract when the DOE failed to meet a Jan. 31, 1998, deadline to begin accepting used fuel. The dispute stemmed from contracts the DOE entered into with the utilities concerning the DOE's obligations under the Nuclear Waste Policy Act. Seventeen lawsuits involving 44 reactors were settled previously.

Xcel Energy (NYSE: XEL) is a major U.S. electricity and natural gas company that provides a comprehensive portfolio of energy-related products and services to 3.4 million electricity customers and 1.9 million natural gas customers through its regulated operating companies in eight Western and Midwestern states. Company headquarters are located in Minneapolis. More information is available at [www.xcelenergy.com](http://www.xcelenergy.com).

###

**Executive Committee Officers:**

**David Wright, Chairman**  
Vice Chairman, SC Public Service Commission

**Renze Hoaksema, Vice Chairman**  
Director of Federal Affairs, DTE Energy

**David Boyd, Membership**  
Commissioner, MN Public Utilities Commission

**Robert Capstick, Finance**  
Director of Government Affairs, Yankee Atomic/Connecticut Yankee

**Greg White, Communications**  
Commissioner, MI Public Service Commission



July 8, 2011

Letter sent by facsimile

The Honorable Rodney Frelinghuysen  
Chairman  
House Appropriations Subcommittee Energy and Water Development  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Peter Visclosky  
Ranking Member  
House Appropriations Subcommittee Energy and Water Development  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Frelinghuysen and Ranking Member Visclosky:

In face of the Department of Energy's (DOE) continued actions to zero out funding for the nuclear waste repository at Yucca Mountain in its fiscal year (FY) 2012 budget request, the members of the Nuclear Waste Strategy Coalition (NWSC) lauds your commitment to reinstate \$25 million from the Nuclear Waste Fund (NWF) for the nuclear waste disposal program (Program). We also appreciate the language contained in the bill that none of the funds made available may be used to conduct closure of adjudicatory functions and other related activities with the Yucca Mountain geologic repository. Further, that the spent nuclear fuel currently stranded at decommissioned sites will be the first fuel to be removed from these sites.

The NWSC also lauds the \$10 million appropriations from the NWF to the Nuclear Regulatory Commission (NRC) for the continued review of the Yucca Mountain project, and direction that the NRC Chairman may not terminate any projects without the approval of a majority vote of the NRC Commissioners.

The July 1, 2011, U.S. Court of Appeals for the District Circuit decision stated that although the NRC has suspended the Atomic Safety License Board review of the license application, the 1982 Nuclear Waste Policy Act, as amended (NWPA), requires the NRC to comply with its statutory mandate to resume the review of the Yucca Mountain license application.

The Program that includes the review of the license application is self-sustained through the NWF, funded by the rate payers from 41 states, estimated to be paying more than \$770 million annually through their electric bills. With interest credits, the Fund earns annually more than \$1.1 billion. The nation's rate payers have already invested \$15 billion for the scientific research and technology studies carried out at the Yucca Mountain site, and have paid more than \$37 billion, including interest, into the NWF, with nothing in return. These same rate payers will now be funding indefinite on-site storage facilities that are scattered throughout this nation.

The DOE's failure to fulfill its statutory and contractual obligations and Congress' failure to carry out its mandate under the NWPA, is burdening U.S. tax payers with additional liabilities currently estimated as high as \$50 billion. Seventy-one breach-of-contract claims have been filed against the DOE since 1998, already resulting in more than \$1.2 billion in

damages awards from the Judgment Fund. This amount does not include the more than \$190 million in litigation expenses the Department of Justice is incurring to defend these cases. Moreover, these estimates do not include the additional \$500 million to \$1 billion a year in damages if spent nuclear fuel and high-level radioactive waste is still stranded indefinitely at commercial nuclear plant sites.

Again, we commend you for appropriating funds to ensure Yucca Mountain is maintained as a potential permanent repository for spent nuclear fuel and high-level radioactive waste, and that the value produced through investment in research, engineering and regulatory oversight is preserved. We also urge your continued leadership in fulfilling the obligations set forth in the NWPA. Every day that passes represents a continued taking from millions of rate payer's payments into the NWF, and a growing financial obligation on our citizens.

The NWSC is a diverse and an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 45 member organizations in 32 states. The primary focus by the NWSC is to ensure that DOE and Congress carry out the principles outlined in the 1982 Nuclear Waste Policy Act, as amended -- protect ratepayer payments made into the NWF; ensure that the nuclear waste disposal program is appropriately funded on an annual basis; and the removal of spent nuclear fuel and high-level radioactive waste currently stranded at 121 commercial, defense and decommissioned sites in 39 states.

Respectfully yours,



David Wright  
Commissioner, South Carolina Public Service Commission, and  
Chairman, Nuclear Waste Strategy Coalition

- C: The President of the United States.  
The Honorable John Boehner, The Speaker of the House of Representatives.  
The Honorable Steven Chu, Secretary of Energy.  
United States Senate.  
Governors with stranded SNF and HLRW in their state.  
The House Appropriations Committee.  
The House Energy and Commerce Committee.  
The Honorable Darrell Issa, Chairman, House Oversight and Government Reform Committee.  
The Honorable Peter Lyons, Assistance Secretary for Nuclear Energy, Department of Energy.  
Mr. David Zabransky, Acting Principle Director, DOE/OCRWM.

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3841

July 8, 2011

The Honorable Gregory B. Jaczko  
Chairman  
Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Dear Chairman Jaczko:

We write with regard to the Committee's investigation into the decision-making process related to the pending license application for construction of a high-level waste repository at Yucca Mountain. According to information developed during the investigation, you and your office staff were involved in decisions relating to the NRC staff's completion of its technical review, which was undertaken to determine whether the Department of Energy (DOE) application for a license to construct a repository satisfies NRC regulations.

The attached email (see Attachment A) between NRC personnel indicates that you or staff in the NRC Chairman's office were involved in the alteration of the original language in the professional staff's draft of the Technical Evaluation Report (TER). We understand that the TER was prepared at your direction to replace the staff-prepared Safety Evaluation Report regarding post-closure safety of the repository (SER Volume 3). Both the SER Volume 3 and the TER contain extremely important information regarding the safety and viability of the Yucca Mountain project.

Documents produced during the course of our investigation suggest that NRC professional staff was on track to complete the SER Volume 3 well before the scheduled November 2010 publication date. In July 2010, however, you ordered the NRC professional staff to slow down or delay its important work on SER Volume 3. Your purposeful delay then allowed you, in October 2010, to order the NRC staff to stop its work and close down its review prior to completing the SER Volume 3. Per your directions, the professional NRC staff stopped work on the SER Volume 3 in October 2010, but continued to work to complete a final, "reversible" SER document that could be stripped of its findings and converted into a TER.

On February 25, 2011, the Construction Authorization Board (CAB) issued an order demanding that the NRC show cause why the NRC should not be ordered to place an unredacted version of the SER Volume 3 into the Yucca licensing-proceeding database. The March 3, 2011, NRC response states that the SER Volume 3 was a preliminary draft, depicting preliminary views, and therefore was not ready for submission. However, NRC's response neglected to inform the CAB that a reversible SER Volume 3 had been or was about to be completed. NRC staff had, in fact, by March 2011, finished its work on all open issues in the SER Volume 3 and even obtained clearance to issue the volume from the NRC's Office of General Counsel. NRC professional staff then proceeded to strip out the SER's findings and converted the final document into a TER, which has been ready for publication since March 2011.

We seek to determine whether you, the NRC chairman's office staff, or NRC staff made all of the Commissioners aware of the completion of the reversible SER Volume 3 in a fulsome and timely manner. We also seek to determine whether NRC staff representations, made as part of the licensing proceeding, fully explained that the SER had been or was about to be completed, and was ready for formatting and the office director's signature. Therefore, we write to request additional information regarding communications relating to the reversible SER and your role in the SER and TER process.

Accordingly, pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, we respectfully ask that you provide written responses to the following questions and provide the requested documents by July 22, 2011:

1. Provide all documents, including but not limited to emails, containing or referencing communications between or among NRC staff concerning the Construction Authorization Board's February 25, 2011, Board Order concerning the SER Volume 3<sup>1</sup> status.
2. Provide all documents, including but not limited to emails, containing or referencing communications between NRC staff and any of the five NRC Commissioners concerning the status of the SER Volume 3 or the TER.<sup>2</sup>
3. Provide all documents, including but not limited to emails, in your possession or the possession of staff in the NRC Chairman's office related in any way to the SER Volume 3 or the TER.
4. Have you or any staff in the NRC Chairman's office ever utilized an email account other than your official government email account to send or receive emails relating in any way to the Yucca Mountain project? If so, please identify the email account or accounts and produce all such emails between January 1, 2009, and the present.

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<sup>1</sup> Document entitled: *Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada. Volume 3: Repository Safety After Permanent Closure.*

<sup>2</sup> Document entitled: *Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain License Application. Postclosure Volume: Repository Safety After Permanent Closure.*

We request that you adhere to instructions contained in Attachment B to this letter for responding to the Committee's document requests.

Furthermore, we request that you review your records and produce all documents in response to our March 31, 2011, letter. After examining your response to our March 31, 2011, letter, we have reason to believe that all responsive documents from you and office staff have not been produced. Other Commissioners have provided us with emails from your staff that were not provided in your production of documents. Additionally, please provide full unredacted copies of redacted documents previously produced to the Committee, which were redacted without explanation.

Should you have any questions, you may contact Peter Spencer or Carl Anderson of the Majority Committee Staff at (202) 225-2927.

Sincerely,



---

Fred Upton  
Chairman



---

John Shimkus  
Chairman

Subcommittee on Environment and the Economy

Attachments

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Gene Green, Ranking Member  
Subcommittee on Environment and the Economy

The Honorable Kristine L. Svinicki  
The Honorable George Apostolakis  
The Honorable William D. Magwood, IV  
The Honorable William C. Ostendorff

**From:** Mohseni, Aby  
**Sent:** Tuesday, June 07, 2011 6:21 PM  
**To:** Haney, Catherine  
**Cc:** Itzkowitz, Marvin; Young, Mitzl; Kokajko, Lawrence; Davis, Jack; Weber, Michael; Borchardt, Bill  
**Subject:** RE: TER Volume 3

Cathy,

I respectfully disagree with your June 6, 2011, decision not to approve the Technical Evaluation Report (TER) Postclosure Volume, as written, for publication and public distribution. I also disagree with the need to revise the TER. Therefore, I request your reconsideration and permission to publish the TER as soon as possible. Failing that, I request that the matter be referred to the Commission.

The basis for my disagreement and request that the issue be referred to the Commission is as follows:

- 1) You refer to the TER as draft. It is not draft; it is final and it was completed on or around March 31, 2011. It has gone through the process for signature by me as the acting Director of HLWRS in accordance with current practice. In addition, we received a "no legal objection" from OGC. It was then presented to you as a matter of courtesy because of the sensitivities surrounding activities associated with Yucca Mountain. You asked us to delay publication until you had discussed with your executive management.
- 2) As you stated in your March 6, 2011 affidavit, we developed the document based on the technical insights gained in the development of draft SER Volume 3 and associated documents. We removed references to the regulations and worked closely with OGC to reference the Yucca Mountain Review Plan (YMRP) appropriately and to ensure adherence to our agency requirements.
- 3) Your affidavit is related to an SER, an official NRC licensing document. The TER is a knowledge management document and contains multiple disclaimers that, according to OGC, could not be confused with an SER and could not be relied upon for licensing.
- 4) The TER reflects the knowledge acquired in preparation for and during the review of the Yucca Mountain License Application, using a risk informed, performance based approach. To that end, the reference to YMRP was viewed by the technical staff and by OGC as an integral part of the scope of the technical evaluation.
- 5) Lawrence, Jack Davis and I were present in your office on April 4, 2011, when Mike Weber called you to convey concerns about the references to YMRP in the TER. You indicated to Mike that consistent with the direction provided, we had developed a knowledge management document, and that you would not feel comfortable trying to change the technical content of a staff knowledge management document. To give you assurance that Mike's concerns were adequately addressed, we called Marv Itzkowitz (OGC) in your presence, and he confirmed that Mike's concerns were not shared by OGC. Nonetheless, we developed an additional section called "Note to Reader" which further highlighted the distinction between an SER and a TER to allay the concerns

conveyed by Mike. You indicated that when you asked for Mike's views on the Note, he said that you needed to talk to the Chairman.

- 6) I believe the availability of the TER to the public is beneficial from a scientific, technical assessment and evaluation standpoint and should be made publicly available immediately. It will also enhance NRC's credibility with respect to openness and transparency. Interested stakeholders include the Congress, Blue Ribbon Commission, EPA, DOE, industry, as well as our international counterparts.
- 7) Your third point about adding a disclaimer to the executive summary is reasonable. While there are disclaimers already, there is no harm in adding another one.
- 8) Since you make reference to the draft SER Volume 3, it should be stated for the record that it is complete in content, with OGC's "no legal objection" and no open issues, and available for issuance upon your signature and accompanying review for formatting and logistical preparation.
- 9) As you know, there are several ongoing investigations regarding NRC's activities and decision-making regarding Yucca Mountain licensing and closure. To avoid another potential issue concerning the integrity of the process, I request that you either provide your permission to issue the TER or take the matter of issuance of the TER to the full Commission for their direction.

In reaching this decision, I have conferred with the available Branch Chiefs and Deputy Director. Thank you for the opportunity to consider my response.

Aby

**From:** Haney, Catherine  
**Sent:** Monday, June 06, 2011 4:13 PM  
**To:** Mohsen, Aby  
**Cc:** Itzkowitz, Marvin; Young, Mitzl; Kokajko, Lawrence; Davis, Jack; Weber, Michael; Borchardt, Bill  
**Subject:** TER Volume 3

Aby,

I have reviewed certain sections of the staff's draft "Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain License Application; Postclosure Volume: Repository Safety After Permanent Closure" (TER Postclosure Volume) and do not approve the document, as written, for publication and public distribution unless the draft document is revised.

1. Consistent with our original intent to make the TER a public document and a desire to be consistent with statements made by the Chairman that the document would not contain



any "findings," any references to a finding or conclusion against the YMRP need to be removed. In its current form, the draft Postclosure SER (Volume 3) and the TER Postclosure Volume are too similar. Findings against the Yucca Mountain Review Plan (YMRP) and a regulatory finding are virtually indistinguishable to stakeholders. I believe this to be especially true in light of the Commission's review and approval of the publication of the YMRP in 2002. To issue the TER for public distribution, as currently written, in my opinion would be inconsistent with my affidavit to the Licensing Board signed March 3, 2011 and Agency (Darren Ash and mine) statements related to the Heritage Foundation's FOIA request for an unredacted version of SER Volume 3. TER content should be consistent with the overall objective of the TER, which is to preserve the knowledge gained in preparation for and during the review of the Yucca Mountain license application, including the status of the review at the time of termination in early October 2010, independent review work completed, open issues at the time of termination, and plans for completing the review if it had continued. Much of the content of the TER remains the same, but it needs to be re-focused consistent with the TER's objective.

2. The note to reader is no longer needed with the changes noted under #1.
3. The following text be included in the executive summary -- "No licensing decision regarding a construction authorization for Yucca Mountain can be made until the NRC staff finishes its technical review and the preparation of the SER, the NRC's Construction Authorization Board adjudicate contentions admitted in the licensing proceeding, and the Commission concludes its supervisory review of contested and uncontested issues."

Cathy

NOT FOR PUBLIC DISSEMINATION

## RESPONDING TO COMMITTEE DOCUMENT REQUESTS

*In responding to the document request, please apply the instructions and definitions set forth below:*

### INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.
11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:
  - a. how the document was disposed of;
  - b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
  - c. the date of disposition;
  - d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.
12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.
13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.
16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.
17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

#### DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.



UNITED STATES  
NUCLEAR WASTE TECHNICAL REVIEW BOARD  
2300 Clarendon Boulevard, Suite 1300  
Arlington, VA 22201

July 14, 2011

The Honorable Pete Domenici  
The Honorable Per F. Peterson  
Co-Chairs  
Reactor and Fuel Cycle Technology Subcommittee  
Blue Ribbon Commission on the Nation's Nuclear Future  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Commissioner Domenici and Commissioner Peterson:

On behalf of the U.S. Nuclear Waste Technical Review Board, I submit these Board comments on the Reactor and Fuel Cycle Technology Subcommittee draft report, dated June 2011.

As you know, the Board has followed closely the Commission's activities since the Commission was established. Board members and staff have testified on several occasions, either before Commission subcommittees or the full Commission. Given the Board's technical mandate, it would not be appropriate for the Board to make comments on non-technical aspects of the Subcommittee's recommendations. However, the Board is pleased to provide the following technical comments.

The Board notes the Subcommittee's discussions on the need to provide "*near-term improvements in the safety and performance of existing light-water reactor technology as currently deployed in the United States*" and the need for "*longer-term efforts to advance potential 'game-changing' nuclear technologies and systems that could achieve very large benefits across multiple evaluation criteria compared to current technologies and systems.*" The Board believes that consideration of improvements in existing technologies and development of new nuclear technologies should include the waste-stream consequences of the adoption of the changes as part of the decision-making process. For example, changes in fuel burnup levels achieved in reactors, together with changes in other performance parameters and the introduction of "game-changing" technologies, such as advanced reprocessing flowsheets, may have a significant impact on both waste streams requiring disposal and the final waste forms best suited to their disposal. The Board thus recommends that any evaluation of the benefits of such changes also take into account the impact on the waste management requirements that will result from the adoption of the changes.

Evaluation of various potential fuel cycles is extremely difficult due to the highly technical aspects of these fuel cycles and the lack of mature development of the technologies. The Board agrees with your conclusion that "*No currently available or reasonably foreseeable reactor and fuel cycle technologies—including current or potential reprocess and recycle*

*technologies—have the potential to fundamentally alter the waste management challenge this nation confronts over at least the next several decades, if not longer.”* This conclusion should be integrated into the nation’s near-term planning for what needs to be done to deal with the continuing build up of nuclear waste from commercial nuclear plants and the existing stockpile of defense and DOE wastes stored across the country. While RD&D is important, it also is important to move on a disposal solution which will ultimately be required regardless of waste form(s). Efforts at siting such a facility should not be delayed by RD&D on fuel-cycle alternatives.

The Board thanks the Commission for the opportunity to comment on the draft report prepared by the Reactor and Fuel Cycle Technology Subcommittee. The Board looks forward to interacting with the Commission as it moves forward in preparing its final report.

Sincerely,

{Signed by}

B. John Garrick  
Chairman



FOR IMMEDIATE RELEASE – July 15, 2011

News Release 11-09

John Dobken, Public Affairs, 509-377-8369

Page 1 of 2

Angela Smith, Public Affairs, 509-377-4154

## **Energy Northwest awarded final judgment for cost of used nuclear fuel storage**

**RICHLAND, Wash.** – A federal court ruled last Friday to award Energy Northwest more than \$48.7 million in damages for the construction and licensing of a used fuel storage area at Columbia Generating Station. The ruling came nearly five years after the court determined the U.S. Department of Energy was in breach of contract for its failure to accept the utility's used nuclear fuel.

"This is a huge victory for the region and the ratepayers of the Northwest," said Mark Reddemann, Energy Northwest CEO. "However, this judgment does not resolve the issue of long-term storage of used nuclear fuel, nor does it lessen the legal obligation of the federal government to develop and manage that process."

Though Energy Northwest and the nuclear energy industry continue to advocate completion and use of a national repository, Columbia's used fuel can continue to be safely and securely kept for decades at the plant in its used fuel pool and above-ground dry storage area.

According to court documents, Energy Northwest represents one of more than 60 such cases filed by nuclear utilities.

### **About Energy Northwest**

*Energy Northwest develops, owns and operates a diverse mix of electricity generating resources, including hydro, solar and wind projects - and the Northwest's only nuclear power plant. These projects provide enough reliable, affordable and environmentally responsible energy to power more than a million Washington homes each year, and that carbon-free electricity is provided at the cost of generation. As a Washington state joint operating agency, Energy Northwest comprises 28 public power member utilities from across the state serving more than 1.5 million ratepayers. The agency continually explores new generation projects to meet its members' needs. Energy Northwest – [www.energy-northwest.com](http://www.energy-northwest.com).*



**Background**

Energy Northwest initially filed its lawsuit in January 2004 and sought \$56,859,345 in damages at trial. A 2006 ruling by the court determined that DOE was in breach of contract with Energy Northwest for the department's failure to begin accepting used nuclear fuel from the nuclear utility industry in January 1998. That is the date when a national repository was to be made available by DOE to receive used fuel from more than 100 U.S. nuclear energy facilities.

The case was tried in Washington D.C. between Feb. 2 and Feb. 20, 2009. The U.S. Court of Federal Claims awarded Energy Northwest full damages in February 2010. The Department of Energy appealed a portion of the claim.

On April 7, 2011, the U.S. Circuit Court of Appeals for the Federal Circuit ruled that Energy Northwest was rightfully granted \$2.9 million in overhead costs but the federal government was not required to pay \$6 million in interest charges. The Appeals Court remanded the issue on payment for plant modifications for further hearing. Energy Northwest, without waiving its rights on the merits of the claim, made the business decision to forego further trial on the plant modifications portion of the claim in order to expedite payment of the judgment.

###



**Nebraska Public Power District**  
Always there when you need us

**(<http://www.nppd.com/>)**

Home (<http://www.nppd.com/>) | NPPD, DOE reach settlement on costs for on-site storage

(outages)



(<http://www.facebook.com/nebraskapublicpowerdistrict>)



(<http://www.twitter.com/nppdnews>)



(<http://www.youtube.com/nppdvtv>)

1877-ASKR-NPPD

## NPPD, DOE reach settlement on costs for on-site storage

Columbus, Neb.- Nebraska Public Power District has reached a settlement agreement with the United States Department of Energy over costs incurred by the utility for on-site storage of used nuclear fuel from Cooper Nuclear Station. The settlement follows a decade of litigation and, more recently, months of negotiations with the DOE.

The settlement between NPPD and the DOE has resulted in an initial payment of \$60,572,538 to the District. This amount covers the costs NPPD incurred through 2009 for construction of an independent spent fuel storage facility at CNS to store used nuclear fuel previously stored in the used fuel pool on site. Costs for used fuel storage needs between 2010 through 2013 will be submitted annually to the DOE and settlement payments will be determined accordingly.

DOE was obligated under the National Waste Policy Act (NWPA) of 1982 to be responsible for the disposal of high-level radioactive waste and used nuclear fuel. To date, DOE has not accepted any fuel, and a permanent facility, originally designated to be Yucca Mountain in Nevada, has not been established. The failure of DOE to accept the used nuclear fuel per the contract led NPPD and other nuclear utilities to file a lawsuit against the DOE in 2001. Due to the settlement, NPPD's case has been dismissed.

"This settlement is favorable for the District and its customers," said NPPD President and CEO Pat Pope. "Over the years, our customers have been paying into the federal fund for a permanent storage location which has not been developed. NPPD anticipates that it will have recouped approximately 90 percent of our costs through 2009 for the on site storage facility, and have avoided significant, future, legal expenses by agreeing to this settlement."

Since 1983, NPPD has made quarterly payments into the NWPA fund managed by DOE. A total of \$167 million has been paid through the end of the first quarter of 2011. The amounts are based upon each kilowatt hour of electricity generated at Cooper Nuclear Station.

DOE was required to begin receiving the fuel in 1998, but did not, forcing many nuclear power plants to begin constructing and operating on-site storage facilities similar to the one constructed at Cooper. Used nuclear fuel is typically stored in a used fuel pool on site. Used fuel pools only have limited space and must make room for additional fuel that is removed from the reactor during refueling outages.

Pope said the settlement payment from DOE would be used for working capital purposes and the purchase of future nuclear fuel requirements. Costs for new fuel for the plant in the spring of 2011 were \$66 million, with forecasts of the next purchase of fuel rod assemblies to be approximately \$120 million. Part of that increase comes as a result of moving from an 18-month refueling cycle to a 24-month cycle, which requires a larger batch of fuel assemblies.



# NRC NEWS

U.S. NUCLEAR REGULATORY COMMISSION

Office of Public Affairs Telephone: 301/415-8200

Washington, D.C. 20555-0001

E-mail: [opa.resource@nrc.gov](mailto:opa.resource@nrc.gov) Site: [www.nrc.gov](http://www.nrc.gov)

Blog: <http://public-blog.nrc-gateway.gov>

No. 11-138

July 21, 2011

## NRC ISSUES FIRST OF THREE TECHNICAL EVALUATION REPORTS ON DOE'S YUCCA MOUNTAIN LICENSE APPLICATION

The Nuclear Regulatory Commission has published the first of three technical evaluation reports (TERs) detailing the agency staff's review of the Department of Energy's license application for a high-level waste repository at Yucca Mountain in Nevada.

Publication of the report provides the staff's technical review of the post-closure information in the Yucca Mountain application. This TER does not include findings as to whether NRC's regulatory requirements have been satisfied.

"Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain Repository License Application; Postclosure Volume: Repository Safety After Permanent Closure," is part of the agency's orderly closeout of the Yucca Mountain license review process and is intended as a public record of the staff's scientific and technical work in preparing for and reviewing the application. It was developed using the draft Volume 3 of the staff's Safety Evaluation Report on the application.

The TER was prepared as part of the agency's knowledge management activities during the closeout of the Yucca Mountain licensing review. The closeout, including publication of two additional TERs, is expected to be complete by Sept. 30.

The TER is available on the NRC website's [Yucca Mountain page](#).

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News releases are available through a free *listserv* subscription at the following Web address: <http://www.nrc.gov/public-involve/listserver.html>. The NRC homepage at [www.nrc.gov](http://www.nrc.gov) also offers a SUBSCRIBE link. E-mail notifications are sent to subscribers when news releases are posted to NRC's website.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

July 22, 2011

The Honorable Fred Upton  
Chairman, Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your July 8, 2011 letter. In that letter you requested information concerning the development of a "reversible" Volume III of the Safety Evaluation Report (SER) for the Yucca Mountain application. As you know, documents relating to the drafting and finalization of SER Volume III have already been provided in response to your letter of March 31, 2011. The additional documents relating to your request and responsive to items 1, 2, and 3 in your July 8, 2011, letter, are enclosed. Many of these documents have not been made available to the public. I respectfully request that the Committee not release them.

Some of the statements in the letter are based on a factual misunderstanding. Unfortunately, the technical staff's testimony before the committee on June 24 created some confusion about the status of Volume III of the SER. It is incorrect to say that the SER was complete by late 2010, including the Office of the General Counsel's (OGC) no legal objection.

The facts are that on July 15, 2010, a draft version of SER, Volume III was provided to Catherine Haney, Director of the Office of Nuclear Material Safety and Safeguards for her review. Ms. Haney neither completed this review nor concurred on the document. While the staff continued to review and revise portions of the draft through September 2010, it was not completed.

In October 2010, staff was directed to develop a Technical Evaluation Report (TER) capturing the knowledge acquired during the review of the Yucca Mountain application. In carrying out that direction, some staff members apparently began working on what they referred to, during the June 24<sup>th</sup> hearing, as a 'reversible SER' document. Such a term or product does not exist in NRC statutes, regulations, or practice, and neither I nor the senior program managers responsible for providing information to the Commission on high-level waste activities were aware until testimony at the June 24<sup>th</sup> Energy and Commerce Committee hearing that such a document was under development. The clear and consistent direction given to staff has been to stop working on the licensing documents and devote their effort to thoroughly documenting the work they did in a Technical Evaluation Report (TER). The TER was released publicly on July 21, 2011.

These events occurred during a period of heightened external political pressure on the agency regarding the future of Yucca Mountain. I share your concern about the appearance of agency actions when this type of political pressure exists. I affirm that none of my actions were based on political influence and the NRC Inspector General's comprehensive investigation confirmed that.

I understand that you have questions about whether my office identified all responsive documents to your March 31, 2011, request. The documents provided by my office were located after completing a reasonable, diligent search. But, if others have provided you with additional documents we were not able to identify, please feel free to provide me with specifics and we will conduct additional searches.

The material that I provided to you in redacted form consisted of material prepared by my staff for my periodic one-on-one meetings with my fellow Commissioners. These meetings serve a very important opportunity for me to discuss policy issues with them. The portions I redacted either did not pertain to Yucca Mountain and therefore fell outside the scope of the Committee's investigation or related to adjudicatory discussions.

With respect to question number 4, I have not used a personal e-mail account to send or receive e-mails relating to the Yucca Mountain project. My staff uses their government e-mail accounts for the conduct of agency business.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg B. Jaczko", with a long horizontal line extending to the right.

Gregory B. Jaczko

Enclosures: As stated

cc: Rep. Henry Waxman

**Executive Committee Officers:**

**David Wright, Chairman**  
Vice Chairman, SC Public Service Commission

**Renze Hoeksema, Vice Chairman**  
Director of Federal Affairs, DTE Energy

**David Boyd, Membership**  
Commissioner, MN Public Utilities Commission

**Robert Capstick, Finance**  
Director of Government Affairs, Yankee Atomic/Connecticut Yankee

**Greg White, Communications**  
Commissioner, MI Public Service Commission



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Updated July 22, 2011

NWPA – 31 January 1988 Deadline  
Judgments and Settlements

**May 2009 – Judgments**

- Northern States Power/Xcel Energy - \$116.5M.
- PG&E - \$42.8 M.
- Carolina Power & Light (Progress Energy) - \$82.8 M.
- Sacramento Municipal Utility District - \$53.1M.
- Southern Nuclear Operating - \$77.1M (Alabama Power \$17.3M; Georgia Power \$59.9M).
- System Fuels, Inc. - \$10M.
- Systems Fuel Inc./Entergy Arkansas - \$48.7M.
- Yankee cases (3) - \$142.8 M (Yankee \$32.9M; CT Yankee \$34.2M; ME Yankee \$75.8M).
- TVA - \$34.9M.
- Dominion - \$154.8M (DNC \$42.7M; VEPCO \$112.1M).
- Boston Edison - \$40M.
- Wisconsin Electric Power - \$37.7M.

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**July 2011 – Settlements**

**For further details see attached October 29, 2010 DOE memo.**

Exelon (2004) - Four lawsuits settled. Plants involved - Dresden 1, 2, 3; Zion 1, 2; Byron 1, 2; Braidwood 1,2; LaSalle 1, 2; Quad Cities 1, 2; Peach Bottom 2, 3; Limerick 1, 2; Clinton, Oyster Creek, TMI 1. Utilities involved - Exelon Generation Company, Commonwealth Edison Co., AmerGen Energy Co. Note that the Exelon settlement replaced an earlier attempt to settle some of these cases by a contract amendment device that was invalidated by the 11th Circuit in the *Alabama Power* case in which Xcel participated as one of the named petitioners.

South Carolina Electric and Gas (sometime between 2004 and 2006) - One lawsuit settled. Plant involved – Virgil C. Summer.

Omaha Public Power District (2006) - One lawsuit settled. Plant involved - Fort Calhoun.

Duke (2007) - One lawsuit settled. Plants involved - Oconee 1, 2, 3; McGuire 1, 2; Catawba 1 and 2.

TVA (2008) - Settlement involves Browns Ferry Units 1 and 3 and Sequoyah Units 1 and 2.

FPL (NextEra Energy) (2009) - Three lawsuits settled. Plants involved - Turkey Point 3, 4; St. Lucie 1, 2; Seabrook; FPL Energy Duane Arnold; FPL Energy Point Beach 1, 2; . Utilities involved - Florida Power & Light, FPL Energy Seabrook, Massachusetts Municipal Wholesale Electric Co., Taunton Mun. Lighting, Hudson Light and Power (these last three are minority co-owners of Seabrook), FPL Energy Point Beach, FPL Energy Duane Arnold, Interstate Power and Light (the latter a co-owner of Duane Arnold). Subsequent to the settlement, the FPL Energy companies were renamed as NextEra companies.

PSEG Nuclear (2009) - One lawsuit settled. Plants involved - Hope Creek, Salem 1, 2. Note that lawsuits by Hope Creek and Salem former co-owners Delmarva and Atlantic City Electric had been thrown out prior to the settlement.

Dominion (2009) – Lawsuit settled. Plant involved Kewaunee.

Wisconsin Electric (2011) - One lawsuit settled. Plants involved - Point Beach 1, 2. Note that this settlement involves WE's claims prior to the sale of the units to NextEra.

Nebraska Public Power District (2011) - \$61M. One lawsuit settled. Plant involved – Cooper.

PPL Susquehanna (2011) - One lawsuit settled. Plants involved - Susquehanna 1, 2. Note that although not specifically named in the settlement (or the lawsuit), the settlement covers the minority co-owner Allegheny Electric as well.

Ameren UE (2011) - One lawsuit settled. Plant involved - Callaway.

Consolidated Edison Co. of NY (2011) - Assuming what we understand is correct, this involved the settlement of one lawsuit. Plants involved - Indian Point 1, 2. Note that this settlement involved claims prior to ConEd's sale of the units to Entergy in 2000.

Northern States Power/Xcel Energy (July 2011) – \$100 M plus for on-site storage costs at Prairie Island and Monticello plants.

Consumers Energy (July 2011) – \$120M settlement agreement for damages. Settlement agreement with Consumers extinguishes its DOE liability.

Energy NW (July 2011) - \$48.7M for storing fuel at the Columbia Generating Station, Richland, WA.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL  
WASHINGTON, DC 20555 - 0001

July 26, 2011

MEMORANDUM TO: Administrative Judge Thomas S. Moore  
Chair, Construction Authorization Board 4

Administrative Judge Paul S. Ryerson  
Member, Construction Authorization Board 4

Administrative Judge Richard E. Wardwall  
Member, Construction Authorization Board 4

FROM: Daniel J. Graser /RA/  
Licensing Support Network Administrator

SUBJECT: Shutdown of the Licensing Support Network

This is to advise Construction Authorization Board 4 that the Licensing Support Network (LSN) components operated by the Atomic Safety and Licensing Board Panel will cease operations on or about August 5, 2011.

Once the LSN search engine and website are shut down, the parties will still control their own documentary material and bibliographic headers stored on systems operated under their control, and therefore have the ability to comply with the Board's orders addressing submission to the docket. However, access to the individual collections by other parties, and presumably the public, will no longer be pursuant to the agency regulations at 10 C.F.R. Part 2, Subpart J, regardless of the status of the proceeding.

A number of issues are worthy of further consideration by the Board. Parties to the proceeding have, by Board direction, consistently identified documents by their LSN Accession Number. The docket contains references by LSN Accession Number throughout both the motions practice and the transcript collections. As the LSN Accession Number is no longer viable for identification purposes, the Board may desire to direct the substitution of Participant Accession Numbers in all future communications. To facilitate that effort, the LSNA staff has prepared a list of LSN Accession Numbers and their associated Participant Accession Number. If requested by the Board, we can make that list available to the parties to the proceeding via CD transfer media, as well as submit it to the docket as a cross-reference tool for any future identification purposes.





UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL  
WASHINGTON, DC 20555 - 0001

The LSN portal page contains a roster entitled "License Application Supporting Documents"<sup>1</sup> that provides the document title, DOE report number, LSN Accession Number and Participant Accession Number for all the primary underlying technical materials that support DOE's License Application. This list represents a valuable finding tool and should be considered for inclusion in the docket together with the above noted cross-reference list of LSN/Participant Accession Numbers. Although not a party to the proceeding, LSNA staff could submit this to the docket if directed to do so.

Administratively, the procedures for submitting newly-identified materials to the docket and any associated certification of those submissions should be addressed by the Board and communicated to the parties as soon as possible.

Similarly, the various Board Orders addressing ongoing document collection certification and reporting requirements applicable to the LSN environment should be revisited to ensure that comparable procedures exist for the docket collection and its routine updating.

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<sup>1</sup> Currently found at <http://www.lsnnet.gov/download/196LASupportingDocuments6-30WithLSNLinks.htm>

# BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE

July 29, 2011

The Honorable Dr. Steven Chu  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

Dear Secretary Chu:

At the direction of the President, you charged the Blue Ribbon Commission on America's Nuclear Future with reviewing policies for managing the back end of the nuclear fuel cycle and recommending a new plan. We thank you for choosing us to serve as Co-Chairmen of the Commission and for selecting the talented and dedicated set of Commissioners with whom we serve.

We have sought to ensure that our review is comprehensive, open and inclusive. The Commission and its subcommittees have heard from hundreds of individuals and organizations on a wide range of issues through formal hearings, site visits, and written letters and comments submitted through the Commission web site. We have visited several communities across the country that have a keen interest in the matters before the Commission. We have also visited a number of other countries to gain insights as to how the United States might proceed. We are indebted to the many people who have offered us their expertise, advice and guidance.

As required by the Commission charter, we are submitting this draft report of the Commission for your review. The Commission has investigated a wide range of issues. This report includes recommendations covering topics including the approach to siting nuclear waste management facilities, the transport and storage of spent fuel and high-level waste, options for waste disposal, institutional arrangements for managing spent nuclear fuel and high-level wastes, reactor and fuel cycle technologies, and international considerations. We also make recommendations regarding the handling of the Nuclear Waste Fund.

The name of the Commission – the Blue Ribbon Commission on America's Nuclear Future – has caused some observers to assume the Commission would make recommendations regarding the advisability or appropriate level of future U.S. reliance on nuclear power. We have stayed true to the specific tasks assigned to us in our charter and have not made such broader recommendations. We have, however, considered a wide range of possible scenarios for the future of nuclear energy in the

United States, to ensure that our recommendations can accommodate a full range of possibilities.

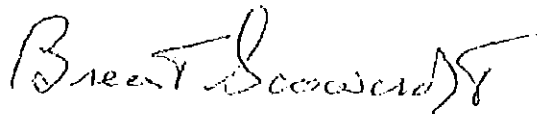
You directed that the Commission was not to serve as a siting body. We therefore have not recommended specific locations for any component or facility of the U.S. nuclear waste management system. We have also not issued any findings on the merits of Yucca Mountain or any other site as a repository. Furthermore, we have not defended or opposed the Administration's actions regarding Yucca Mountain. What we have endeavored to do is recommend a sound waste management approach that can lead to the resolution of the current impasse; an approach that neither includes nor excludes Yucca Mountain as an option for a repository and can and should be applied regardless of what site or sites are ultimately chosen to serve as the permanent disposal facility for America's spent nuclear fuel and other high-level nuclear wastes.

In keeping with our commitment to conduct an open and inclusive review, we will now seek public feedback on our draft report and will modify our report as appropriate. Our charter requires the Commission to deliver a final report to you by January 29, 2012. We intend to submit our final report on or before that date.

Respectfully submitted,



Lee H. Hamilton  
Co-Chairman



Brent Scowcroft  
Co-Chairman

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

June 20, 2011

Ms. Catherine Haney  
Director  
Office of Nuclear Material Safety  
and Safeguards  
Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Dear Ms. Haney:

Thank you for agreeing to testify on Friday, June 24, 2011, at 9:00 a.m. in 2322 Rayburn House Office Building, at the Subcommittee on Environment and the Economy hearing entitled "NRC Repository Safety Division – Staff Perspective on Yucca License Review."

The attached documents provide important details concerning the preparation and presentation of your testimony.

- The first attachment describes the form your testimony must take.
- The second attachment provides you with Electronic Format Guidelines that detail how to file testimony electronically.
- The third attachment provides you the Rules for the Committee on Energy and Commerce.
- The fourth attachment provides you with a Truth-in-Testimony Disclosure form and a Truth-in-Testimony instruction sheet.

Please be aware that, in accordance with the Committee rules:

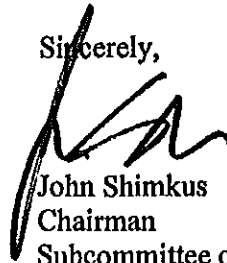
Ms. Catherine Haney

Page 2

- (1) witnesses will be required to provide sworn testimony; and
- (2) witnesses have a right to be represented by counsel, who may advise the witnesses on their Constitutional rights, but may not testify. If appearing as a witness, the counsel will be sworn in.

If you have any questions concerning any aspect of your testimony, please contact Peter Spencer of the Energy and Commerce Committee staff at (202) 225-2927.

Sincerely,



John Shimkus  
Chairman

Subcommittee on Environment and the Economy

- Enclosures:
- (1) Form of Testimony
  - (2) Electronic Format Guidelines
  - (3) Rules for the Committee on Energy and Commerce
  - (4) Truth-in-Testimony Disclosure form

**Statement of Catherine Haney  
Director, Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Committee on Energy and Commerce  
Subcommittee on Environment and the Economy  
U.S. House of Representatives  
June 24, 2011**

Good morning, Chairman Shimkus and Ranking Member Green. I am Catherine Haney, Director of the Office of Nuclear Safety and Safeguards at the U.S. Nuclear Regulatory Commission. I have held this position since May 10, 2010, serving as Deputy Office Director immediately prior to that. I am responsible for management and oversight of three program areas: fuel cycle safety and safeguards, spent fuel storage and transportation, and high level waste repository safety. I am here today to discuss agency activities regarding the NRC's regulatory oversight of the proposed Yucca Mountain high-level nuclear waste repository.

The Department of Energy submitted a license application in June 2008 to seek authorization to construct the geologic repository at Yucca Mountain. The NRC accepted the application for review in September 2008 and commenced a two-pronged review process: (1) the technical review of the license application by the NRC staff, and (2) the hearing process before the Atomic Safety and Licensing Board. The results of the staff's technical review are documented in a Safety Evaluation Report (SER). For the Yucca Mountain licensing review, the staff decided to produce the SER in five volumes.

Before I was appointed by the Commission to the position of Office Director in May 2010, the Department of Energy had filed a motion to withdraw the Yucca Mountain application before the Atomic Safety and Licensing Board. As a result, my predecessor had directed the staff to start planning for orderly closure as a contingency and for documenting the licensing review while we continued our development of the remaining volumes of the Safety Evaluation Report. At the

end of June 2010, the Licensing Board denied DOE's request to withdraw the license application; this decision of the Board has been under review by the Commission since early July 2010. The staff issued Volume 1 of the SER on schedule in August 2010. Over the course of the remainder of fiscal year 2010, my staff continued with the licensing review and the preparation of an orderly closure plan in case the Commission overturned the Board's June 2010 decision or the Congress enacted the appropriations requested by the President in the FY2011 budget.

For fiscal year 2011, the President's budget requested \$10 million for the close-out of the high level waste program and no funds from the Nuclear Waste Fund for the Department of Energy's high-level waste program. On October 1, 2010, while operating under a continuing resolution and consistent with direction from the Chairman, we began the process of transitioning to close-out of the Yucca Mountain program. Specifically, we began the process of documenting and preserving the staff's review, which included converting the remaining volumes of the draft Safety Evaluation Report into a Technical Evaluation Report (TER). The objective of the TER is to capture the knowledge gained during the last 30 years in preparing for and conducting the Yucca Mountain licensing review. This knowledge will be invaluable in future reviews of proposed repositories. When the TER is complete, we will publish it as a NUREG report in the knowledge management series. It is our belief that by thoroughly documenting the staff's technical review and preserving it as appropriate for publication and public use, the agency will be best positioned to respond to any future direction from the Commission, Congress or the courts. I believe this action was consistent with Commission policy, the general principles of appropriations law, and applicable guidance from the Office of Management and Budget and the Government Accountability Office on expenditure of funds under continuing resolutions. We have continued this work consistent with the 2011 appropriations bill ultimately signed into law this spring, which provided funding consistent with the President's original request.

In September 2010, my staff began to draft a memorandum to the Commission that would provide an update on the Yucca Mountain Program. The scope and purpose of the memorandum evolved over a number of weeks as external and agency internal factors, such as budget parameters, individual Commissioner and Commission actions, and inquiries from Congress extended the dialogue regarding the future of the Yucca Mountain program. On February 4<sup>th</sup>, I signed this memorandum that provided the information I felt needed to be conveyed to the Commission to keep the Commission fully and currently informed. That memorandum outlined with some specificity the various actions completed, underway, and planned. These included:

- Converting the remaining volumes of the SER into the TER that will document the staff's technical review activities and technical conclusions, but will contain no staff findings or regulatory compliance;
- Archiving the institutional, regulatory, and technical information amassed over nearly 3 decades of evaluation of Yucca Mountain and other potential sites for deep geologic disposal of spent fuel and high level waste;
- Redirecting the Center for Nuclear Waste Regulatory Analyses to focus its Yucca Mountain-related efforts on the preservation of knowledge and records management;
- Establishing priorities for action commensurate with available resources;
- Continuing to support the Office of General Counsel on adjudicatory hearing-related matters;
- Videotaping interviews with departing and other senior technical staff for knowledge capture and as a future training resource;



- Initiating discussions with the General Services Administration and other government agencies about preparatory activities to close and decommission the Las Vegas Hearing Facility infrastructure; and
- Keeping the Licensing Board informed of the status of the staff's application review activities.

Our efforts to thoroughly document and capture the knowledge from our Yucca Mountain activities continue, with a goal of completing these activities by the end of fiscal year 2011. No resources are requested for this activity in fiscal year 2012.

As we have been proceeding with the orderly closure of the Yucca Mountain regulatory program, we have also been implementing our strategy for integrated spent fuel management. Given the expected delay in the availability of a repository for high-level waste, the Nation will accumulate an increasing inventory of spent nuclear fuel. Consistent with NRC's mission of ensuring safety and security, the NRC's objective in this strategy is to develop the regulatory tools, analyses, and data needed to evaluate and support the safe and secure management of this increasing inventory. This necessarily includes the licensing, research, oversight, rulemaking, international, and other activities necessary to accomplish the agency's mission for a variety of waste management strategies that the Administration and the Congress may pursue. We are pursuing this strategy in collaboration with a broad array of external stakeholders.

This completes my prepared remarks. I would be happy to address any questions you might have.

**STATEMENT BY  
LAWRENCE E. KOKAJKO  
ACTING DEPUTY OFFICE DIRECTOR  
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS  
US NUCLEAR REGULATORY COMMISSION  
TO THE  
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY  
COMMITTEE ON ENERGY AND COMMERCE  
US HOUSE OF REPRESENTATIVES  
JUNE 24, 2011**

Mr. Chairman, Ranking Member Green, and members of the Subcommittee, I am honored to appear before you today to provide my perspective on those internal NRC issues associated with the review of the Department of Energy's license application for the proposed repository at Yucca Mountain, Nevada.

Currently, I am the acting Deputy Office Director for the Office of Nuclear Material Safety and Safeguards at the NRC, although my official position is the Director of the Division of High-Level Waste Repository Safety. I have been with the NRC since 1989, and I have regulatory experience in reactors, materials and waste.

I had always wanted to be associated with a program of national significance, and when the opportunity to be the Director presented itself, I enthusiastically accepted. Part of my enthusiasm was due to the Repository Safety staff itself. All employees of the NRC are dedicated to its mission to assure safety, security and environmental protection, and the members of the Repository Safety division are no exception. Moreover, in 1987, agency leadership, with great foresight, contracted with the Southwest Research Institute that organized the Center for Nuclear Waste Regulatory Analyses as the NRC's only federally-funded research and development center and to be a conflict of interest free entity. Both the NRC and Center employees have expertise in geological and related sciences and engineering, and they are

dedicated professionals that have spent decades in preparation for this application. Besides wanting to work on a program of national significance, I wanted to work with these talented professionals. I recognized their unique set of knowledge, skills and abilities, and the challenging subject matter and context for this important major federal action. Quite frankly, I am very concerned about the loss of this disposal expertise as spent nuclear fuel continues to increase and the US program is now uncertain. I hasten to add that geologic disposal remains the internationally recognized means to isolate high-level radioactive waste for very long time periods.

The Nuclear Regulatory Commission is an independent agency, and as such, the agency has the responsibility to demonstrate this independence by openness and transparency in its deliberations and decision-making. This can be displayed by collaborating and assuring all information is available and discussed. Agency independence and its internal processes should be jealously guarded, and the appearance of political influence in such deliberations and decision-making should be avoided at all costs.

Given that the Congress did not amend the Nuclear Waste Policy Act or enact other legislation to discontinue development of Yucca Mountain, other legitimate internal processes could have occurred. For example:

- The Atomic Safety and Licensing Board could have agreed that the Department of Energy could withdraw the repository license application;
- The Commission itself could have overturned the Atomic Safety and Licensing Board's decision promptly; or alternatively,
- The collective Commission could have decided through a vote and subsequent Staff Requirements Memorandum that the staff should formally suspend its review pending legislative or adjudicatory action.

Staff would have willingly followed any outcome from a faithfully executed legitimate process. Until such decision, staff was under the distinct impression that it could continue its safety review as long as sufficient funding existed. Further, I would go so far to say that many think as I do - that the Nation paid for this review, and the Nation should get it.

I would have liked to have seen the Commission act collegially to address this issue. As noted in the recent Office of Inspector General report, the decision to close the program by the end of Fiscal Year 2011 was made without the entire Commission being fully informed or acting in concert. When this became apparent, executive staff leadership should have acted as a brake to afford the Commission information and time to assess and develop appropriate program direction. This would have enabled more budget and program information to rise to the entire Commission and would have precluded decisions based on incomplete information or perception.

Regardless of the NRC's evaluation of the technical merits of the application, the staff takes no position on actual construction and operation of a proposed repository. Ultimately, it is up to the Congress to determine whether to build and operate the facility. Any such national policy decision by Congress would be based upon the science and engineering performed by the Department of Energy and the subsequent safety evaluation and adjudication by the NRC, assuring that this meets the standards set by the Environmental Protection Agency.

NRC requires complete and accurate information in all material respects in relation to the repository license application (10 CFR 63.10). The Department of Energy has not identified a safety defect in the application; thus, it remains valid and before the NRC. I believe science and the scientific process must inform and guide NRC's regulatory decision-making. I further

believe we have been open and transparent with our stakeholders with regard to our regulatory duties as this Chairman and this Commission have emphasized. Technical staff associated with this program are dismayed by what has happened thus far, and we would hope the day comes soon when we can return to being boring regulators.

This concludes my remarks, and I look forward to your questions.

**WRITTEN STATEMENT OF  
JANET P. KOTRA,  
SENIOR PROJECT MANAGER  
DIVISION OF HIGH-LEVEL WASTE REPOSITORY SAFETY  
U.S. NUCLEAR REGULATORY COMMISSION  
TO THE  
HOUSE ENERGY AND COMMERCE COMMITTEE  
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY  
JUNE 24, 2011**

Good morning, Chairman Shimkus, Mr. Green and members of the Committee. Thank you for inviting me to participate in your hearing today. My name is Janet Kotra. I am a senior scientist and project manager in the Division of High-level Waste Repository Safety at the U.S Nuclear Regulatory Commission (NRC). I joined NRC more than 27 years ago as a postdoctoral fellow with the NRC's Advisory Committee on Reactor Safeguards. Subsequently, it was my privilege to serve as a technical assistant for two prior Commissioners, one Republican, and one Democrat. Since 1993, I have worked in High-level Waste Repository Safety with NRC's technical staff. I was one of the major contributors in developing NRC's Part 63 regulations for the proposed Yucca Mountain Repository. As leader of the HLW public outreach team, it was my job to organize and conduct more than three dozen public meetings and workshops in Nevada and California to explain NRC's oversight role, regulatory process and review procedures. In addition, since 2006, I have been honored to serve as Chairman of the OECD Forum on Stakeholder Confidence. The Forum is an International Organization, based in Paris that examines factors that influence and contribute to public confidence in the area of radioactive waste management. In 2008, when NRC received the Yucca Mountain repository license application from the Department of Energy, I joined with my colleagues, other scientists and engineers, on the NRC staff and at NRC's contractor, the Center for Nuclear Waste

Regulatory Analyses, in carrying out an independent safety review of the Yucca Mountain license application and in preparing portions of the NRC staff's Safety Evaluation Report. Recently, I was honored to accept an invitation to serve on an international peer review panel, established for the government of Sweden, to evaluate the development and communication of the safety case submitted as part of an application for a geologic repository in that country.

One of the most satisfying and enriching aspects of my job with NRC was the ten years or so I spent on the road meeting with people in the Affected Units of Local Government and the Affected Tribe near Yucca Mountain, Nevada. I spoke with people about NRC's oversight and review processes. I helped individuals and local officials understand their options for participating in NRC's hearing process. I explained how the NRC staff reviews and considers public comments on proposed rule changes. I listened to people's concerns and learned how to be more effective as a public servant. Of the comments I heard over and over again was, "how will NRC make its safety decision?" and "how can we affect NRC's decision or take part in your process, if we don't understand how your decisions are made?" Over the course of ten years we worked at becoming more transparent. We worked hard to make our speech clearer, our documents more available and our presentations more understandable. We assured our audiences that once the application came in, we, as independent scientists and engineers, would conduct a thorough, technically sound, and fair review. We also promised that our findings would be made available for all to see and evaluate for themselves. And then, those findings, along with the application and all contentions—there were almost 300--admitted by an independent hearing board would be subject to an open and impartial public hearing before any decision would be made to deny or authorize construction of a repository at Yucca Mountain. I assured people over and over again that this would be the case, because I believed it. I believed it because this is how the NRC's licensing process has worked when NRC has decided whether or not to license reactors and other large nuclear facilities throughout our more than 35-

year history. And I believed it because it is consistent with the law, consistent with NRC's regulations, and consistent with our role as an independent safety regulator as established for us by Congress.

Then, as reported recently by the NRC's Inspector General, Chairman Jaczko ordered the Director of my office, the Office of Nuclear Materials Safety and Safeguards, to postpone issuance of Safety Evaluation Report Volumes 1 and 3. Staff and managers of the division of High-level Waste Repository Safety became concerned that the entire Commission might not be fully aware of the policy, legal and budgetary consequences of such redirection and guidance from the entire Commission was called for. I was directed to prepare a draft memorandum for the five Commissioners to be signed by the Office Director. We hoped that given an honest assessment of the facts, fair-minded members of the Commission would see the need to provide the staff with clear policy direction as we struggled to honor conflicting duties and instructions. We were told, however, that the memorandum should make no reference to any of the related policy issues, and that I should prepare it as a "status report." Over the coming months, using a highly irregular process, I was asked to incorporate a very large number of changes from senior agency managers. I was willing to comply, despite my growing reservations, so long as any description of the program's history and status remained reasonably accurate and consistent with my knowledge of the facts.

Later, in September, it became clear that, rather than just postpone issuance of individual Safety Evaluation Report volumes, the Chairman's intent was to terminate the staff's safety review altogether. Using the continuing resolution as justification, the Chairman directed that all work on the SER must stop (including Volume 3 on post closure safety, which was already complete, and undergoing management review). Written guidance was transmitted later on October 4, 2010. The Chairman met with the staff's Yucca Mountain team just after Columbus Day. He explained that the decision to shut down the staff's review of the application was his



alone and that the staff should move to orderly shutdown of NRC's Yucca Mountain program. This, despite the fact that, then, as now, the Nuclear Waste Policy Act remains in effect, the hearing process continues, and no Commission decision has yet been issued on whether the application may be legally withdrawn.

As the months wore on, and work on the memorandum continued, formal and informal comments from the Deputy Executive Director for Operations, the Chief Financial Officer and the General Counsel were incorporated. These comments repeatedly diluted or contradicted the language prepared by the High-level waste staff and staff of the Atomic Safety and Licensing Board Panel. Both had tried to include text describing policy, programmatic and budgetary difficulties faced by two offices struggling to cover the costs of shutting down a complex and valuable national program and infrastructure, while at the same time supporting an ongoing hearing.

Finally, in late January, 2011, I could no longer, in good conscience, agree with the memorandum as written. I formally withdrew my concurrence, consistent with NRC's procedures, on February 1, 2011. I did so because of senior managers' insistence on changes that, to me, implied that it was the NRC staff who voluntarily, or, worse still, on its own volition, terminated NRC staff's independent review of the Yucca Mountain License application, and sought to end support for a full and impartial hearing to review the application. To me, this was grossly misleading and unacceptable. In my experience, the staff members, who worked tirelessly to conduct a fair, independent and technically sound safety review, and to prepare the required Safety Evaluation Report, stood down from those obligations only with enormous reluctance and heavy hearts. The staff did not choose to abandon its duty under the law. The independent technical staff of NRC's Division of High-level Waste Repository Safety did not wake up one fine day and decide to terminate the statutory review of a license application under our review. We were directed explicitly by Chairman Jaczko to terminate the review. Yet, on

multiple occasions I was prohibited from including in the status report any declarative statement to that effect. As drafted, the memorandum made no reference to the facts surrounding the termination of the staff's review of the Yucca Mountain application. Without this crucial context, the reader is left with a mistaken impression that the termination and "orderly shutdown" of the licensing review and hearing was the staff's preferred and well-considered course of action, initiated by the technical staff. Nothing could be further from the truth.

In closing, as a member of NRC's technical staff, I remain deeply concerned that the groundbreaking regulatory work and accomplishments of many decades, made by my colleagues, not be lost or wasted. This seminal work is documented in the Draft Safety Evaluation Report volumes staff has prepared. Irrespective of what happens to Yucca Mountain, preservation and dissemination of the results of NRC staff's review and findings are of critical importance. The public deserves access to what we learned and accomplished during our safety review. If the Blue Ribbon Commission does indeed find that deep geologic disposal is "inescapable" as a solution for our nation's spent fuel and high-level radioactive wastes, the lessons that NRC's technical staff learned from reviewing and evaluating compliance of the first license application for a geologic repository in the U.S. must be preserved, studied and shared as the resources they truly are. Please help us, the NRC technical staff, keep the commitments we made to the public about the openness and transparency of NRC's safety review at Yucca Mountain. I implore you to take whatever action you deem necessary to allow completion and prompt, public release of the complete, unredacted and uncensored volumes of the NRC staff's Safety Evaluation Report. Thank you for your concern and attention to these important matters. I welcome any questions you may have.

STATEMENT

BY ABY MOHSENI

ACTING DIRECTOR, DIVISION OF HIGH LEVEL WASTE REPOSITORY SAFETY

OFFICE OF NUCLEAR MATERIALS SAFETY AND SAFEGUARDS

UNITED STATES NUCLEAR REGULATORY COMMISSION

TO THE

HOUSE COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

US HOUSE OF REPRESENTATIVES

JUNE 24, 2011

Thank you Mr. Chairman, Ranking Member Green, and Members of the Subcommittee, for the opportunity to be here today. My name is Aby Mohseni. I worked for the State of Washington before joining the NRC in 1990. I became the Deputy Director for Licensing and Inspections in the Division of High Level Waste Repository Safety in 2006. I am currently the Acting Director of this Division.

I will briefly describe the Division's role, accomplishments and challenges.

The U.S. Congress enacted the Nuclear Waste Policy Act directing and entrusting the NRC scientists to determine the safety and security of the Yucca Mountain Geological Repository for the nation. NRC has invested almost three decades preparing for and conducting a safety review of the proposed Yucca Mountain design.

My staff and I are quite used to challenges. Reviewing the performance of a mountain over time frames of a million years using a first of a kind risk-informed, performance-based methods is a challenge. But that scientific challenge seemed to be the easy one. Less than a year after the

Department of Energy submitted its long awaited License Application to build a Geological Repository at Yucca Mountain, Nevada, in 2008, our budget was cut by over 30%. Despite that and subsequent cuts, we, NRC staff and scientists, impressed with the task entrusted to us for the nation's safety, absorbed the pressures and maintained our focus on our mission.

Although resilient from our adaptation to budgetary pressures, we were unprepared for the political pressures and manipulation of our scientific and licensing processes that would come with the appointment of Chairman Jaczko in 2009. We believe that any political manipulation of the scientific and licensing process is an assault on the responsibility to the NRC mandated by Congress.

We, staff, felt that manipulation at the Commission level, as described in the NRC's Inspector General report issued earlier this month, permeated the activities of my Division by some senior managers. For example, some NRC senior managers directed the staff to suppress information to the Commission by providing them a Status report instead of a Policy report on the closure of Yucca Mountain. Whereas a Policy report empowers the Commission with the staff's findings and recommendations required to make sound policy for the nation's safety, a Status report merely informs them of decisions made, leaving the burden of discovery on individual Commissioners. Additionally, some senior managers contributed to the manipulation of the budget process and information to apparently make sure that the Yucca Mountain project would be left unfunded even if the License Application was still before the NRC. Furthermore, apparently at the direction of the Chairman and with the aid of some senior managers, the disclosure to the rest of the Commission of the staff's views on the impacts of budget cuts and allocations were suppressed. I note that keeping the full Commission fully and currently informed is a statutory requirement.

Despite being entrusted with independent decision making, when confronted with these concerns by the OIG, these senior managers essentially responded that the Chairman's office made them do it. I ask who holds these managers accountable? Chairman Jaczko?

We at the NRC are at a crossroads. Apparently, the NRC's senior leadership is ineffective in upholding the integrity of this Agency. Politics are influencing some of the NRC's staff's work. The question is could politics at some point affect the staff's technical and regulatory findings and decisions? This is not where an independent Safety organization should be. If the NRC were to find any of our licensees so lacking, we would require of them a corrective action plan. We should hold ourselves at least to the same standards. The NRC needs to enact a corrective action plan.

I cannot overemphasize the importance of your oversight role. If it were not for your oversight, much of what has been revealed would remain behind closed doors. Given the recent revelations, I am not sure that you, the oversight Committee, made up of the representatives of the citizens of United States of America, entrust us at the NRC to always be and remain objective, independent, and credible to ensure the health and safety of the American public. We need to re-earn your trust.

I thank you for this opportunity.

STATEMENT  
BY NEWTON KINGMAN STABLEIN  
CHIEF, PROJECT MANAGEMENT BRANCH B  
DIVISION OF HIGH-LEVEL WASTE REPOSITORY SAFETY  
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS  
UNITED STATES NUCLEAR REGULATORY COMMISSION  
TO THE  
HOUSE COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY  
JUNE 24, 2011

Good morning, Chairman Shimkus, Mr. Green, and members of the Subcommittee.

Thank you for inviting me to participate in your hearing today. My name is Dr. Newton Kingman Stablein. After earning a Ph.D. in Geological Sciences from Northwestern University, I worked in academia and private industry for several years before joining the U.S. Nuclear Regulatory Commission (NRC) in 1984. My first position at the NRC was that of Project Manager for the NRC's Yucca Mountain team. I led the team in the completion of reviews of major U.S. Department of Energy (DOE) documents, including the Yucca Mountain draft Environmental Assessment in 1984-1985 and the Yucca Mountain Site Characterization Plan in the 1988-89 timeframe. I have spent most of my 27 years at the NRC involved in NRC's prelicensing and licensing activities related to DOE's efforts to support an application to construct a High-Level Waste (HLW) geological repository at Yucca Mountain. I am currently Chief of a Project Management Branch in the Division of High-Level Waste Repository Safety (HLWRS). This Branch is responsible for leading the review of DOE's license application by the NRC staff and its contractor since 1987, the Center for Nuclear Waste Regulatory Analyses. The Yucca Mountain team that was to conduct the review of the application included many scientists and engineers who had been part of the team for twenty years or more and who were excited at the opportunity, finally, to review a license application for a proposed repository.

The NRC received DOE's license application in June 2008 and, after completing an acceptance review, docketed the application in September 2008. The Nuclear Waste Policy Act

(NWPA) mandated that the NRC was to complete its review of DOE's application within three years, with a year extension possible upon Commission request. The NRC staff prepared to complete its review of DOE's application and production of its Safety Evaluation Report (SER) within approximately eighteen months, by March-April 2010. That would leave about eighteen months for the Atomic Safety and Licensing Board (ASLB) to conduct its hearings on the application. Staff recognized this as an extremely challenging schedule and developed an innovative Project Plan to meet that timetable, determined to fulfill its responsibilities with an on-time production of a high quality SER.

In March 2009, the Executive Director for Operations (EDO) informed the Commission that because of reduced resources in the FY 2009 budget and expected cuts in FY 2010, the NRC staff would complete the SER in FY 2012, two years later than the original schedule. Faced with reduced resources, the staff revamped its plans for the SER, opting to issue it in five separate volumes on a staggered schedule, with the first volume to be published in March 2010 and the other volumes to follow.

In January 2010, the staff informed the Atomic Safety and Licensing Board that the NRC staff would issue Volume 1 (General Information) and Volume 3 (Postclosure) by no later than August and November 2010, respectively. The EDO reaffirmed this information in his March 2010 memorandum to the Commission.

The staff continued development of the five SER volumes and had Volume 1 ready for publication, with a No Legal Objection from Agency attorneys in hand, in June 2010, two months ahead of the August target. Around the same time, Chairman Jaczko issued a memorandum to the EDO stating that it was in the best interests of the Agency "not to alter the schedule for the completion of SER volumes at this time" and directing that Volume 1 be published no earlier than August 2010. He added that subsequent volumes should be issued consistent with and not earlier than the schedule provided to the Commission in March 2010. Volume 1 was published in August 2010.

Volume 3, viewed as the most significant of the SER volumes because of its assessment of DOE's safety case for how the repository would perform over the one million year lifetime of the repository, could have been ready for publication in September 2010, but because the Chairman had directed staff not to issue it before November 2010, the final review steps leading to its publication were slowed.

The staff continued work on the remaining volumes, with the expectation that Volume 3 would be issued in November 2010 and that the remaining three volumes would be published by March 2011. However, on September 30, 2010, the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) instructed NRC staff to transition immediately to closure of Yucca Mountain licensing activities and to cease work on the SER volumes. Within the next couple of weeks, the Chairman met with staff and affirmed that it was his decision to discontinue work on the SER and to transition to closure activities, including the issuance of Technical Evaluation Reports (TERs) instead of the SER volumes. It was pointed out to him at this time that allowing the staff to finish the SER volumes would be by far the most efficient and effective use of Nuclear Waste Fund resources and at the same time would give the Nation the benefit of an independent regulator's evaluation of the Yucca Mountain application. He made it clear that, although he could choose that path, he considered that it would be "more political" to publish the SER volumes with regulatory findings than to issue them as TERs devoid of such findings.

This decision had a profound impact on the Yucca Mountain team and its program. As a supervisor in this program, I am keenly aware of the agony experienced by the NRC staff as it dutifully followed the Chairman's direction. Many of the staff have worked on the Yucca Mountain program for two decades or longer. To be denied the opportunity to finish the SER, the culmination of those years of precicensing and licensing activity, because of what appeared to be the arbitrary decision of one individual, was wrenching. The staff was not aware of any substantive discussion and airing of issues at the Commission level, as would be expected for a decision of this magnitude regarding a major program that has existed for almost 30 years. It



felt to the staff as if the Chairman had casually dismissed the staff's dedicated efforts and sacrifices of those many years without even bothering to engage his fellow Commissioners in the manner that Commission decisions are usually handled.

Although the staff was deeply affected by the Chairman's decision, it acted immediately to follow his direction to develop TERs with no regulatory findings in place of the planned SER volumes. The staff took great pains to preserve as much of the technical content of the former SER volumes as possible while carefully eliminating references to findings with respect to Part 63, the regulation for licensing the Yucca Mountain repository. On March 31, 2011, the staff presented the Postclosure TER, complete and supported by a No Legal Objection from the Agency attorneys, to NMSS management for approval to publish. Over two months later, the NMSS Director informed the Acting Director of HLWRS that she did not approve publication of the document in its present form and that it would need modifications to be published.

These latest developments are the most recent and clearest example of how the staff has been denied the opportunity to fulfill its duty to make its technical insights and information available to the Nation and to thereby enrich the ongoing discussion about what path to follow in dealing with nuclear waste. The work of a generation of scientists and engineers continues to be systematically suppressed, to the detriment of these patriots and the Nation at large.



# Sustainable Fuel Cycle TASK FORCE

[www.sustainablefuelcycle.com](http://www.sustainablefuelcycle.com)

Sustainable Fuel Cycle Task Force Science Panel

June 29, 2011

The Honorable Lee H. Hamilton  
Co-Chairman  
Blue Ribbon Commission on America's Nuclear Future  
U.S. Department of Energy  
C/O Mr. Timothy A. Frazier  
1000 Independence Ave., SW  
Washington, DC 20585-1290

The Honorable Brent Scowcroft  
Co-Chairman  
Blue Ribbon Commission on America's Nuclear Future  
U.S. Department of Energy  
C/O Mr. Timothy A. Frazier  
1000 Independence Ave., SW  
Washington, DC 20585-1290

Dear Co-Chairman Hamilton and Co-Chairman Scowcroft:

The recently released majority staff report of the House Science, Space, and Technology Committee titled *Yucca Mountain: The Administration's Impact on U.S. Nuclear Waste Management Policy* finds unequivocally that the NRC's technical review has substantiated, what we as scientists have held all along, that Yucca Mountain is technically suitable as the nation's repository. Furthermore, recent testimony before the House Energy and Environment Subcommittee clearly shows that there continues to be strong local support from the community for Yucca Mountain.

Now that the Yucca Mountain has been found to be technically suitable and locally acceptable, it causes us to ask, once again, as did the House Science Committee, why has this administration shut down the Yucca Mountain Project? It also causes us to ask whether the assigned role of the President's Blue Ribbon Commission on America's Nuclear Future was truly based on a legitimate need to this country's nuclear energy policies, or whether it was to provide cover for a political decision orchestrated by Senator Harry Reid and the current administration. In light of the incontrovertible facts that have now come to light, the Blue Ribbon Commission's continued silence on Yucca Mountain calls into question its own scientific integrity.

Initial statements by the Energy Secretary suggested that the decision to terminate the Yucca Mountain Project was driven by flawed science. Although Secretary Chu has never directly stated any scientific flaw with the Yucca Mountain site, he has implied such on many occasions. For example, on March 4, 2011, at a Senate Appropriations Committee hearing, Secretary Chu cited future climate change and saturated rock fissures issues as potential flaws. When challenged by Congress to provide evidence to support such allegations, the Secretary quickly backed down and stated that the Yucca Mountain project was "unworkable" and that better alternatives were available.



# Sustainable Fuel Cycle TASK FORCE

[www.sustainablefuelcycle.com](http://www.sustainablefuelcycle.com)

The Honorable Lee H. Hamilton  
Co-Chairman  
&  
The Honorable Brent Scowcroft  
Co-Chairman  
Blue Ribbon Commission on America's Nuclear Future  
U.S. Department of Energy  
June 29, 2011  
Page Two

*Yucca Mountain: The Administration's Impact on U.S. Nuclear Waste Management Policy* describes the Majority Staff's review of Volume III of the Nuclear Regulatory Commission's Safety Evaluation Report, which is the Nuclear Regulatory Commission staff's comprehensive technical evaluation of site safety, critical to advancing licensing and construction of the Yucca Mountain facility. The Safety Evaluation Report was obtained by the House Science Committee only after repeated demands and over the objections of Nuclear Regulatory Commission Chairman Gregory Jaczko.

The Majority Staff found that Volume III of the Nuclear Regulatory Commission's Safety Evaluation Report demonstrates in excruciating detail the level of technical support in favor of the site's advancement among technical experts of the Nuclear Regulatory Commission and Department of Energy. In fact the House Science Committee report states that the Nuclear Regulatory Commission staff agreed with over 98.5 percent of the Department of Energy's findings regarding the site's suitability and ability to meet regulatory requirements. The Majority Staff found that the remaining few percent did not impact the Nuclear Regulatory Commission staff's overall conclusions, which were that the Department of Energy's Yucca Mountain License Application complies with applicable Nuclear Regulatory Commission safety requirements, including those related to human health and groundwater protection, and the specific performance objectives called for in regulations for disposal of high-level radioactive wastes at Yucca Mountain found at 10 CFR 63.113-115. We, the Science Panel of the Sustainable Fuel Cycle Task Force are unable to verify these figures due to the unavailability of the document; however, we see little reason to doubt them given the efforts of Chairman Jaczko to prevent independent scientists from seeing NRC staff's evaluations.

*Yucca Mountain: The Administration's Impact on U.S. Nuclear Waste Management Policy* asks, as do we, the following questions: "Why, then, has the President shut down the Yucca Mountain Project?" and "Why does Nuclear Regulatory Commission Chairman Jaczko refuse to permit NRC safety review of the site to continue, and refuse to allow his fellow Commissioners to formally vote on DOE's Motion to Withdraw the Yucca Mountain License Application?" The answer to these questions, now that the conclusions of Volume III of the Nuclear Regulatory Commission's Safety Evaluation Report have finally seen the light of day and have been made available, are clearly not explained by, or based on any scientific or technical evaluation.

On June 1, 2011, Assistant Secretary for Nuclear Energy, Peter Lyons, testified before the House Energy and Commerce Subcommittee on Environment and the Economy that "public acceptance" was the criterion the Secretary used to determine that Yucca Mountain was not a workable site. Yucca Mountain is located in Nye County Nevada. At that same hearing, Nye County Board of County Commissioners Chairman Charles Hollis testified that there is local support and acceptance of the Yucca Mountain project and submitted for the record, resolutions from six local counties attesting to that support.



# Sustainable Fuel Cycle TASK FORCE

www.sustainablefuelcycle.com

The Honorable Lee H. Hamilton  
Co-Chairman  
&  
The Honorable Brent Scowcroft  
Co-Chairman  
Blue Ribbon Commission on America's Nuclear Future  
U.S. Department of Energy  
June 29, 2011  
Page Three

A comprehensive review of policies for managing the back end of the nuclear fuel cycle cannot ignore these two important facts that bear so heavily on the very reason for which the Blue Ribbon Commission was created. Whether the commission exists because the science of Yucca Mountain was flawed, which is now known to be false, or because of lack of local support, which was never a credible issue, it is unconscionable to continue the commission's mission without acknowledging that a repository at Yucca Mountain is technically suitable and locally acceptable. A responsible outcome of the deliberations of the President's Blue Ribbon Commission on America's Nuclear Future should clearly state these facts.

We strongly believe that the Blue Ribbon Commission, following the basic principles of truth and integrity, should at the very least call for the NRC staff technical review to be completed and to publicly release their report including the regulatory findings. With regard to the completion of the licensing process of Yucca Mountain, we note that in August of 2008 Secretary Chu, along with the Directors of all the other national laboratories, signed a nuclear policy statement that called for "licensing of the Yucca Mountain Repository as a long-term resource..."

([http://www.ne.doe.gov/pdfFiles/rpt\\_SustainableEnergyFuture\\_Aug2008.pdf](http://www.ne.doe.gov/pdfFiles/rpt_SustainableEnergyFuture_Aug2008.pdf))

Openness and transparency, as so aptly stated in President Obama's March 9, 2009, directive on Scientific Integrity, demands no less than that this important licensing process be completed. In addition if the Yucca Mountain site meets the NRC regulatory requirements, the Blue Ribbon Commission should recommend that it be included as an alternative to serve the Nation as a solution for addressing the end of the nuclear fuel cycle.

Sincerely,  
Science Panel

Charles Fairhurst, Ph.D.

D. Warner North Ph.D.

Ruth Weiner, Ph.D.

Isaac Winograd, Ph.D.

Wendell Weart, Ph.D.

Eugene H. Roseboom Jr., Ph.D.



UNITED STATES  
NUCLEAR WASTE TECHNICAL REVIEW BOARD  
2300 Clarendon Boulevard, Suite 1300  
Arlington, VA 22201

June 30, 2011

The Honorable Chuck Hagel  
The Honorable Jonathan Lash  
Co-Chairs  
Disposal Subcommittee  
Blue Ribbon Commission on the America's Nuclear Future  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Commissioner Hagel and Commissioner Lash:

On behalf of the Nuclear Waste Technical Review Board, I would like to submit general comments on the Subcommittee on Disposal's draft report, dated June 1, 2011.

As you know, the Board has followed closely the Commission's activities since its inception. Board members and staff have testified on several occasions, either before subcommittees or the full Commission. The Disposal Subcommittee's draft report provides a strong foundation for debating key institutional issues that need to be addressed as the Nation moves forward with its efforts to provide a long-term solution to the problem of managing high-level radioactive waste and spent nuclear fuel.

Given its *technical* mandate, the Board will not offer a detailed critique of the Subcommittee's three key recommendations dealing with institutional design (organizational form, funding, and siting strategy), other than to note that Board members with extensive program management experience concur with the draft report's conclusion that substantial changes are necessary in these areas. Nor, consistent with its past practice, will the Board comment on the Subcommittee's recommendations dealing with the Environmental Protection Agency and the Nuclear Regulatory Commission.

The Board has, however, recently published two substantial reports—*Technical Advancements and Issues Associated with the Permanent Disposal of High-Activity Wastes (TAI)* and *Experience Gained from Programs to Manage High-Level Radioactive Waste and Spent Nuclear Fuel in the United States and Other Countries (EG)*—that speak to matters raised by the Subcommittee.<sup>1</sup> As the following paragraphs suggest, the Subcommittee has reached conclusions that are tightly aligned with many of the views contained in those Board reports.

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<sup>1</sup>Both of these reports are available on the Board's website: [www.nwtrb.gov](http://www.nwtrb.gov).

## **On the need for a deep-mined geologic repository**

In Chapter Four of the draft report, the Subcommittee maintains that “one or more permanent disposal facilities for high-level nuclear waste will be needed in the United States under all reasonably foreseeable scenarios” and that “[d]eep geologic disposal has emerged as the most promising and technically acceptable option” [pg. 27]. The Board agrees. As it states in its TAI report:

The Board believes that keeping a focus on a permanent solution is critical regardless of what interim measures for managing high-activity waste are charted. Among the reasons are (1) a permanent solution is critical to building public confidence that there is a way of isolating nuclear waste radioactivity from the biosphere to acceptable levels; (2) given the long duration of the hazard of high-activity waste, undue delay in implementing a permanent solution could make tenuous a concept of waste management dependent on institutional stability; (3) experience to date has indicated that deploying a permanent solution to isolating high-activity waste could take decades; and (4) there is an international consensus that a permanent solution to high-activity waste isolation is feasible via geologic disposal. [pg. 69]

## **On the question of organizational form for the implementer**

In Chapter Five of the draft report, the Subcommittee considers alternative organizational forms that a new manager of a nuclear waste program might take on. The Subcommittee recommends that a FEDCORP-like organization be created to direct future efforts. The Board takes no position on this particular recommendation, but it is cognizant of language in the draft report that seems to qualify the Subcommittee’s position. To begin with, the Subcommittee realizes that the choice of organizational form depends on how potentially conflicting values, such as independence and accountability [pg. 31], are traded off. Further, the Subcommittee understands that “[t]he general conclusion has been that a number of different organizational forms are viable and could work to provide the focus and effectiveness needed to successfully implement program objectives” and “[m]ore importantly than what form it takes is that a new waste management organization display certain behaviors and attributes (i.e., competence, transparency, flexibility, responsiveness, accountability, etc.)” [pgs. 41, 42].

Both of these conclusions very closely reflect views that the Board expresses in its TAI and EG reports. The impact of organizational arrangements on technical work, for instance, is addressed in the TAI report.

[There is a] need for continuity of management, personnel, and funding. Contractors came and went, and managers cycled in and out, while the amount of money available in the next fiscal year was always in doubt and not under the control of the management of the program. Any engineering program would benefit greatly from having a dedicated organization that would maintain continuity of its personnel, especially of its management and principal engineers and scientists. [pg. 40]

More generally, the EG report considers how different countries have organized their waste-management programs.

The choice of organizational form for the implementer depends in each country on how value-based conflicts are resolved. There does not seem to be “one best way” that can be universally applied. [pg. 22]

Rather than organizational form *per se*, what appears to be important are organizational behaviors, such as leadership continuity, funding stability, and the capacity to inspire public trust and confidence over long periods of time. [pg. 60]

The Board believes that the experience of the 13 national waste-management programs it examined in its EG report does not unequivocally support the Subcommittee’s claim that FEDCORP-like organizational form is the most appropriate for the United States. At most, the international experience suggests that an organization devoted exclusively to managing high-level radioactive waste and spent nuclear fuel, whether government, private, or hybrid, seems to work better than an organization that has multiple missions, some of which may be at cross-purposes with its waste-management responsibilities.

### **On structuring a new siting and development process**

In Chapters Three and Seven of the draft report, the Subcommittee devotes considerable attention to diagnosing the root causes of the problems encountered in the United States in siting and developing both consolidated interim storage facilities and deep-mined geologic repositories. The Board believes that the Subcommittee’s historical analysis is largely correct and informed. Out of the Subcommittee’s evaluation comes the recommendation that a “phased, adaptive approach” be adopted. Support for this recommendation comes from a report by the National Research Council (NRC), *One Step at a Time*, as well as from international experience especially in Canada.<sup>2</sup>

In its EG report, the Board takes note of the fact that the approach the Subcommittee recommends is derived from research on decision-making dating back to the 1950s. Subsequently, researchers have assessed both the strengths and weaknesses of such an approach. The Subcommittee’s discussion does not fully reflect the balance of those assessments, which are well-described in both the NRC report cited above and key documents issued by the Canadian program. For example, the Subcommittee does not examine the difficulties the Japanese have encountered, even pre-Fukushima, in implementing a phased, adaptive siting strategy.

As the Board observes,

At the theoretical level, it is hard to find fault with a decision-making strategy that seems to promise so much [in terms of potential benefits]. As a more practical matter, however, it is unclear whether it can be any more successful than earlier efforts in overcoming local and state opposition to specific siting decisions, whether it can be implemented, and whether it *should* be implemented. [pg. 6]

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<sup>2</sup>The Subcommittee’s draft report asserts that the phased adaptive approach also has been used in Finland and Sweden. A review of the historical record in both these countries suggests that neither one originally cast its siting process in those terms. Although it is possible to interpret what both countries did as being consistent with a phased, adaptive approach, such an interpretation probably reflects the malleability of the concept most of all.

The Board thanks the Commission for the opportunity to comment on the draft report prepared by the Disposal Subcommittee. The Board looks forward to interacting with the Commission as it moves forward in preparing its final report.

Sincerely,

{Signed by}

B. John Garrick  
Chairman





UNITED STATES  
NUCLEAR WASTE TECHNICAL REVIEW BOARD  
2300 Clarendon Boulevard, Suite 1300  
Arlington, VA 22201

June 30, 2011

The Honorable Phil Sharp  
The Honorable Richard Meserve  
Co-Chairs  
Transportation and Storage Subcommittee  
Blue Ribbon Commission on the Nation's Nuclear Future  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Commissioner Sharp and Commissioner Meserve:

On behalf of the U.S. Nuclear Waste Technical Review Board, I am submitting these Board comments on recommendations in the Transportation and Storage Subcommittee's draft report, dated May 31, 2011. The Subcommittee in its draft report identifies many important issues and makes recommendations that will contribute positively to a discussion among policy-makers on an effective approach for managing high-level radioactive waste (HLW) and spent nuclear fuel (SNF). As the Board has often stated, we believe that it is important to move forward expeditiously in establishing policies and taking actions that demonstrate the will and the capacity for addressing these critical national issues.

As you know, the Board has followed closely the deliberations of the Blue Ribbon Commission on America's Nuclear Future (Commission) since the Commission was established in January 2010. Board members and staff have testified on several occasions, either before the full Commission or its subcommittees. In its presentations and written documents, the Board has provided its technical perspective, consistent with its mandate to review the technical and scientific validity of activities undertaken by the Secretary of Energy related to implementing the Nuclear Waste Policy Act and to report Board findings and recommendations to Congress and the Secretary.

Based on the Board's experience in reviewing DOE SNF and HLW management activities and its strong interest in an integrated systems approach to U.S. high-level radioactive waste management (an interest shared by the Commission's Transportation and Storage Subcommittee), the Board conveys the following comments on Subcommittee recommendations numbers 1 through 3, and recommendation number 6.

*Subcommittee Recommendation #1: The United States should proceed expeditiously to establish one or more consolidated interim storage facilities as part of an integrated, comprehensive plan for managing the back end of the nuclear fuel cycle. An effective integrated plan must also provide for the siting and development of one or more permanent disposal facilities.*

**Board Comments:** The Board believes that the system-wide implications of developing consolidated interim storage should be considered as part of a detailed evaluation that includes the advantages and disadvantages of such an approach. For example, the Board notes in its report, *Evaluation of the Technical Basis for Extended Dry Storage and Transportation of Used Nuclear Fuel*,<sup>1</sup> that the length of time SNF is stored at commercial nuclear power plant sites will affect the degree to which fuel or dry storage system components may degrade. Such degradation affects compliance with the regulatory requirements for storage, retrieval, and transport of SNF. Information from the detailed analysis, suggested above, also will inform decisions about what technical capabilities may be required at SNF storage-site locations. The Board agrees that taking full account of the complex nature and integrated dependencies of the entire waste disposal system is vitally important in making any decisions about options for managing SNF and HLW. Thus, siting an interim storage facility without an integrated waste management plan is not recommended.

*Subcommittee Recommendation #2: Recognizing the substantial lead-times that may be required in opening one or more consolidated storage facilities, dispersed interim storage of substantial quantities of spent fuel at existing reactor sites can be expected to continue for some time. The Subcommittee has concluded that there do not appear to be unmanageable safety or security risks associated with current methods of storage (dry or wet) at existing sites. However, to ensure that all near-term forms of storage meet high standards of safety and security for the multi-decade-long time periods that they are likely to be in use, active research should continue on issues such as degradation phenomena, vulnerability to sabotage and terrorism, full-scale cask testing, and other matters.*

**Board Comments:** The Board agrees that technical information and experience to date indicates that low-burnup SNF can be stored safely in the short-term and then transported for additional storage, processing, or disposal. However, as noted in its report on *Extended Dry Storage*, referenced above, the Board believes that there are outstanding issues for which more information is needed before it can be concluded that SNF can be safely placed in dry storage over an extended period of time. For this reason, the Board strongly endorses the Subcommittee's recommendation that an active and sustained research program is required to obtain the additional information necessary to have similar high-confidence in the safe extended storage and subsequent transportation of SNF, particularly for high burn-up SNF, and HLW. Recommendations for future research described in the Board's report concur with the summary of research needs that are discussed in Chapters 3, 4, and 7 of the draft Subcommittee report. Additionally, after extended storage at an interim site, and particularly after transportation, the condition of the spent fuel would need to be established to confirm the integrity of the cladding.

*Subcommittee Recommendation #3: Spent fuel currently being stored at decommissioned reactor sites should be "first in line" for transfer to a consolidated interim storage facility as soon as such a facility is available.*

**Board Comments:** The Board believes that, should one or more consolidated interim storage facilities be constructed, an incremental, staged approach for transferring SNF and HLW to an interim facility is appropriate. It makes sense for the reasons outlined in your report to consider

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<sup>1</sup> This report is available on the Board's website: [www.nwtrb.gov](http://www.nwtrb.gov).

decommissioned sites as “first in line.” However, should it be necessary to transfer SNF or HLW from storage containers to transportation casks after extended storage, this will require either dry-transfer capability or the availability of an operational spent fuel pool at the interim facility.

*Subcommittee Recommendation #6: The current system of standards and regulations governing the transport of spent fuel and other nuclear materials appears to be functioning well, and the safety record for past shipments of these types of materials is excellent. However, planning and coordination for the transport of spent fuel and high-level waste is complex and should commence at the very start of a project to develop consolidated storage capacity.*

**Board Comments:** The Board strongly concurs with the Subcommittee that transportation planning should be considered as early as possible in the development of any waste management system in line with the Board’s comment on Subcommittee Recommendation 1. As the Board has noted in its “Extended Storage Report”, there are inconsistencies in NRC’s storage and transportation regulations that need to be addressed. Based on prior experience with the U.S. repository program, the Board notes the existence of transportation logistics challenges that can affect safety and operational efficiency with respect to loading/unloading, access/egress, and line-haul operations. The Board also notes that, although the safety record for past shipments of these types of materials may be excellent, the scale of the transportation campaign involved in transferring SNF and HLW to one or more interim storage facilities could dwarf those of previous shipments.

Finally, the Board notes that during the next year, a significant amount of new technical information may be available from the Extended Storage Collaboration Program (ESCP), with which the Board interacts, which is focusing on research and information needs related to extended dry storage. The ESCP effort and other analysis and planning work being carried out by the Department of Energy, the Nuclear Regulatory Commission, and the nuclear industry, may provide useful technical information on aspects of the system for managing and disposing of SNF and HLW. The Board suggests that to the extent new technical findings become available in the next few months, the Commission consider such information, if possible, in drafting its final report.

The Board appreciates the interest and courtesy the Commission has extended to the Board during the Commission’s deliberations. We hope that the Commission will continue to call on the Board when it requires technical information related to the management or disposal of SNF and HLW.

Sincerely,

{Signed by}

B. John Garrick  
Chairman

112TH CONGRESS  
1ST SESSION

# S. 1320

To require the Secretary of Energy to offer to enter into temporary used fuel storage facility agreements.

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IN THE SENATE OF THE UNITED STATES

JUNE 30, 2011

Ms. MURKOWSKI (for herself and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To require the Secretary of Energy to offer to enter into temporary used fuel storage facility agreements.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nuclear Fuel Storage  
5 Improvement Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **COMMISSION.**—The term “Commission”  
9 means the Nuclear Regulatory Commission.

1           (2) SECRETARY.—The term “Secretary” means  
2           the Secretary of Energy.

3 **SEC. 3. INCENTIVES FOR SITING OF TEMPORARY USED**  
4 **FUEL STORAGE FACILITIES.**

5           (a) DEFINITIONS.—In this section:

6           (1) AGREEMENT.—The term “agreement”  
7           means a temporary used fuel storage facility agree-  
8           ment entered into under subsection (e).

9           (2) FIRST USED FUEL RECEIPT.—The term  
10           “first used fuel receipt” means the receipt of used  
11           fuel by a temporary used fuel storage facility at a  
12           site within the jurisdiction of a unit of local govern-  
13           ment that is a party to an agreement.

14           (3) NUCLEAR WASTE FUND.—The term “Nu-  
15           clear Waste Fund” means the Nuclear Waste Fund  
16           established under section 302 of the Nuclear Waste  
17           Policy Act of 1982 (42 U.S.C. 10222).

18           (4) UNIT OF LOCAL GOVERNMENT.—The term  
19           “unit of local government” means any borough, city,  
20           county, parish, town, township, village, or other gen-  
21           eral purpose political subdivision of a State, or asso-  
22           ciation of 2 or more political subdivisions of a State.

23           (5) USED FUEL.—The term “used fuel” means  
24           nuclear fuel that has been withdrawn from a nuclear  
25           reactor following irradiation, the constituent ele-

1       ments of which have not been separated by repro-  
2       essing.

3       (b) AUTHORIZATION.—The Secretary shall offer to  
4       enter into temporary used fuel storage facility agreements  
5       in accordance with this section.

6       (c) NOTICE FROM UNITS OF LOCAL GOVERNMENT  
7       TO SECRETARY.—Not later than January 1, 2013, rep-  
8       resentatives of a unit of local government, with the written  
9       approval of the Governor of the State in which the juris-  
10      diction of the local government is located, may submit to  
11      the Secretary written notice that the unit of local govern-  
12      ment is willing to have a privately owned and operated  
13      temporary used fuel storage facility located at an identi-  
14      fied site within the jurisdiction of the unit of local govern-  
15      ment.

16      (d) PRELIMINARY COMPENSATION.—

17           (1) IN GENERAL.—The Secretary shall make  
18      payments of \$1,000,000 each year to not more than  
19      3 units of local government that have submitted no-  
20      tices under subsection (c).

21           (2) MULTIPLE NOTICES.—If more than 3 no-  
22      tices are received under subsection (c), the Secretary  
23      shall make payments to the first 3 units of local gov-  
24      ernment, based on the order in which the notices are  
25      received.

1           (3) TIMING.—The payments shall be made an-  
2 nually for a 3-year period, on the anniversary date  
3 of the filing of the notice under subsection (c).

4           (e) AGREEMENT.—

5           (1) IN GENERAL.—On the docketing of an ap-  
6 plication for a license for a temporary used fuel stor-  
7 age facility, in accordance with part 72 of title 10,  
8 Code of Federal Regulations, at a site within the ju-  
9 risdiction of a unit of local government by the Com-  
10 mission, the Secretary shall offer to enter into a  
11 temporary used fuel storage facility economic impact  
12 agreement with the unit of local government.

13           (2) TERMS AND CONDITIONS.—An agreement  
14 between the Secretary and a unit of local govern-  
15 ment under this subsection shall contain such terms  
16 and conditions (including such financial and institu-  
17 tional arrangements) as the Secretary and the unit  
18 of local government determine to be reasonable and  
19 appropriate.

20           (3) AMENDMENT.—An agreement may be—

21                   (A) amended only with the mutual consent  
22 of the parties to the agreement; and

23                   (B) terminated only in accordance with  
24 paragraph (4).

1           (4) TERMINATION.—The Secretary shall termi-  
2           nate an agreement if the Secretary determines that  
3           any major element of the temporary used fuel stor-  
4           age facility required under the agreement will not be  
5           completed.

6           (5) NUMBER OF AGREEMENTS.—Not more than  
7           2 agreements may be in effect at any time.

8           (6) PAYMENT SCHEDULE.—

9           (A) IN GENERAL.—If the Secretary enters  
10           into an agreement under this subsection, the  
11           Secretary shall make to the unit of local govern-  
12           ment and the State in which the unit of local  
13           government is located—

14                   (i) payments of—

15                           (I) on the date of entering into  
16                           the agreement under this subsection,  
17                           \$6,000,000;

18                           (II) during the period beginning  
19                           on the date of entering into an agree-  
20                           ment and ending on the date of first  
21                           used fuel receipt or denial of the li-  
22                           cense application for a temporary  
23                           used fuel storage facility by the Com-  
24                           mission, whichever is later,  
25                           \$10,000,000 for each year; and



1 (III) during the period beginning  
2 on the date of first used fuel receipt  
3 and ending on the date of closure of  
4 the facility, a total of the higher of—

5 (aa) \$15,000,000 for each  
6 year; or

7 (bb) \$15,000 per metric ton  
8 of used fuel received at the facil-  
9 ity for each year, up to a max-  
10 imum of \$25,000,000 for each  
11 year; and

12 (ii) a payment of \$20,000,000 on clo-  
13 sure of the facility.

14 (B) TIMING OF ANNUAL PAYMENTS.—The  
15 Secretary shall make annual payments under  
16 subparagraph (A)(i)—

17 (i) in the case of annual payments de-  
18 scribed in subparagraph (A)(i)(II), on the  
19 anniversary of the date of the docketing of  
20 the license application by the Commission;  
21 and

22 (ii) in the case of annual payments  
23 described in subparagraph (A)(i)(III), on  
24 the date of the first used fuel receipt and  
25 thereafter on the anniversary date of the

1 first used fuel receipt, in lieu of annual  
2 payments described in subparagraph  
3 (A)(i)(II).

4 (C) TERMINATION OF AUTHORITY.—Sub-  
5 ject to subparagraph (A)(ii), the authority to  
6 make payments under this paragraph termi-  
7 nates on the date of closure of the facility.

8 (f) FUNDING.—Funding for compensation and pay-  
9 ments provided for, and made under, this section shall be  
10 made available from amounts available in the Nuclear  
11 Waste Fund.

12 **SEC. 4. ACCEPTANCE, STORAGE, AND SETTLEMENT OF**  
13 **CLAIMS.**

14 (a) IN GENERAL.—The Secretary shall offer to enter  
15 into a long-term contract for the storage of used fuel from  
16 civilian nuclear power plants with a private entity that  
17 owns or operates an independent used fuel storage facility  
18 licensed by the Commission that is located within the ju-  
19 risdiction of a unit of local government to which payments  
20 are made pursuant to section 3(e).

21 (b) SETTLEMENT AND ACCEPTANCE OF USED  
22 FUEL.—

23 (1) IN GENERAL.—At the request of a party to  
24 a contract under section 302(a) of the Nuclear  
25 Waste Policy Act of 1982 (42 U.S.C. 10222(a)), the

1 Secretary may enter into an agreement for the set-  
2 tlement of all claims against the Secretary under a  
3 contract for failure to dispose of high-level radio-  
4 active waste or used nuclear fuel not later than Jan-  
5 uary 31, 1998.

6 (2) TERMS AND CONDITIONS.—A settlement  
7 agreement described in paragraph (1)—

8 (A) shall contain such terms and condi-  
9 tions (including such financial and institutional  
10 arrangements) as the Secretary and the party  
11 to the contract determine to be reasonable and  
12 appropriate; and

13 (B) may include the acceptance of used  
14 fuel from the party to the contract for storage  
15 at a facility with respect to which the Secretary  
16 has a long-term contract under subsection (a).

17 (c) PRIORITY FOR ACCEPTANCE FOR CLOSED FA-  
18 CILITIES.—

19 (1) IN GENERAL.—If a request for fuel accept-  
20 ance is made under this section by a facility that has  
21 produced used nuclear fuel and that is shut down  
22 permanently and the facility has been decommis-  
23 sioned, the Secretary shall provide priority for the  
24 acceptance of the fuel produced by the facility.

1           (2) SCHEDULE.—Spent nuclear fuel and high-  
2 level radioactive waste generated by a facility in ex-  
3 istence as of the date of enactment of this Act shall  
4 be offered a schedule in accordance with the priority  
5 established pursuant to Article IV.b.5 of the con-  
6 tract entitled “Contract for Disposal of Spent Nu-  
7 clear Fuel and/or High-Level Radioactive Waste”, as  
8 specified in section 961.11 of title 10, Code of Fed-  
9 eral Regulations.

10       (d) TRANSPORTATION OF USED FUEL.—

11           (1) IN GENERAL.—The Secretary shall provide  
12 for the transportation of used fuel accepted by the  
13 Secretary under this section.

14           (2) SYSTEMS AND COMPONENTS.—

15           (A) IN GENERAL.—The Secretary shall  
16 procure all systems and components necessary  
17 to transport used fuel from facilities designated  
18 by contract holders to 1 or more storage facili-  
19 ties under this section.

20           (B) CASKS.—The Secretary shall—

21           (i) use transportation and storage  
22 casks that are approved by the Commis-  
23 sion in use at facilities designated by con-  
24 tract holders; and

1                   (ii) compensate the owner and oper-  
2                   ator of each facility for the use of the  
3                   casks.

○