

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

State Nuclear Safety Inspector Office
Maine CDC – DHHS

December 2011 Monthly Report to the Legislature

Executive Summary

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 123rd 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.

The report covers activities at the storage facility, including the State’s on-going environmental radiation surveillance and the post decommissioning groundwater monitoring program, the national debate over the licensing and construction of a geologic repository for the disposal of spent nuclear fuel at Yucca Mountain in Nevada. The report’s highlights assist readers to focus on the significant activities that took place during the month, both locally and nationally.

LOCAL:

- The State received the U.S. Nuclear Regulatory Commission (NRC) threshold determination on a proposed merger between Northeast Utilities and NSTAR, both indirect co-owners of Maine Yankee. The NRC staff concluded that the proposed merger did not constitute a direct or indirect transfer of control of the Maine Yankee’s facility license, which would require prior NRC approval. However, the NRC staff did determine that a pre-existing issue regarding foreign ownership, control, or domination for Maine Yankee existed. This issue will be addressed separately.
- The Department of Environmental Protection (DEP) issued a letter to Maine Yankee informing them of closure on the radiological tasks associated with the groundwater monitoring program. The only outstanding agreement item remaining is the annual cost report for the monitoring program. The DEP was evaluating whether all the cost information was necessary for final closure.

The national highlights varied from a number of activities as noted below and included:

National:

- The Blue Ribbon Commission on America’s Nuclear Future held a meeting where the three standing subcommittees proposed revisions to their respective draft reports based on public input from five nationally held meetings. The Transportation and Storage Subcommittee was the only Subcommittee to announce a new key recommendation on transportation advocating a prompt development of programs to support a large scale shipping campaign to ensure that the infrastructure will be available when shipments commence. The recommendation also directed the federal government to initiate planning activities with states and tribes and to provide funding and technical assistance for those activities.
- The petitioners from the states of South Carolina and Washington, Aiken County in South Carolina, Nye County in Nevada, the three business leaders from the Tri-City area near the Hanford site in Washington, and the National Association of Regulatory Utility Commissioners filed a writ of

mandamus with the U.S. Court of Appeals for the District of Columbia requesting the Court to direct the Nuclear Regulatory Commission to resume the Yucca Mountain licensing proceedings within 30 days and to either approve or disprove the license application within 14 months. The Nuclear Energy Institute subsequently filed a friend of the court brief in support of the petitioners.

- The Chairman of the Nuclear Regulatory Commission was under scrutiny by the White House and the House's Committee on Oversight and Government Reform after four Commissioners publicly decried the Chairman's leadership and management style. Although the White House continued to support the Chairman, the House Committee issued a report entitled, "A Crisis in Leadership", which listed 14 findings and how those findings led the House committee to conclude that the Chairman's actions were damaging the Nuclear Regulatory Commission.
- The Department of Justice responded to an inquiry from the Blue Ribbon Commission on America's Nuclear Future listing the current federal government's estimated liability for stranding spent nuclear fuel at the nation's reactor sites. The Department of Justice estimate of \$6.4 billion fell short of the Department of Energy's estimate of \$20.8 billion. The Department of Justice calculated an average annual cost per storage year of \$2.5 million out to the year 2055, which is much less than the \$8 million and ever increasing costs it takes to operate and maintain the storage facility at Maine Yankee.
- With the anticipated closure of Yucca Mountain scientists from Sandia National Laboratory were looking at the granite rock formations in northern Minnesota and Wisconsin as potential hosts for a future nuclear waste repository. The Sandia report also eyed the granite deposits from Georgia to Maine as potential sites for long term nuclear waste disposal. Both the East and Midwest areas exhibit geological stability and low permeability, favorable characteristics for siting a nuclear waste repository. Of the twelve foreign countries with spent nuclear fuel or high-level waste nine are considering hosting nuclear waste repositories in granite.

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 123rd 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 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 December the general status of the ISFSI was normal, with no instances of spurious alarms due to environmental conditions.

There was one fire-related impairment in December and it involved a fire door that was not latching reliably. The latch was repaired the next work day. Compensatory measures were put in place from the time it was discovered until the repairs and testing were completed.

There were no security-related impairments for the month. However, there were twenty-four security events logged for the month and twenty-two were due to transient camera issues due to environmental conditions. The remaining two were to document the malfunctioning of two microwave transmitters. One was realigned and the other replaced.

Two condition reports¹ (CR) were written for the month and they are described below.

- 1st CR: Issued to address a documentation oversight in the security workforce qualification records.
- 2nd CR: Documented the remote alarm monitoring company not strictly following communication protocols during testing.

Other ISFSI Related Activities

1. On 12/3 gunfire was heard near the facility. The local law enforcement agencies (LLEA) were notified and responded. They intercepted duck hunters on the water in Bailey Cove. The hunters were reminded

¹ 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.

that any gunfire in proximity to the facility would result in the LLEA responding. Since the hunters were not trespassing, the Nuclear Regulatory Commission's operational center was not notified.

2. On 12/28 the State received the U.S. Nuclear Regulatory Commission (NRC) threshold determination on a proposed merger between Northeast Utilities and NSTAR, both indirect co-owners of Maine Yankee. The NRC staff concluded that the proposed merger did not constitute a direct or indirect transfer of control of the Maine Yankee's facility license, which would require prior NRC approval. The NRC issued a Safety Evaluation Report to document its findings. However, the NRC staff did not determine that a pre-existing issue regarding foreign ownership, control, or domination (FOCD) for Maine Yankee existed. As such the FOCD issue will be addressed separately. Until the NRC completes its assessment for the exemption, the FOCD requirements continue to apply.

Environmental

The quarterly radiation results should be available for the January report.

Groundwater Monitoring Program

On December 5th the Department of Environmental Protection (DEP) issued a letter to Maine Yankee informing them of closure on the radiological tasks associated with the groundwater monitoring program. A copy of the letter is attached. The only outstanding agreement item remaining is the annual cost report for the monitoring program. The DEP was assessing whether all the cost information was necessary.

Other Newsworthy Items

1. On December 1st the U.S. Nuclear Waste Technical Review Board issued a news release of a January 9th meeting over the integration of the Department of Energy's (DOE) Offices of Nuclear Energy and Environmental Management. Speakers from the two DOE offices will discuss a range of fuel cycle alternatives, the present work undertaken to ensure spent nuclear fuel in storage can be safely transported to a centralized storage facility or a geologic repository, and describe current efforts for preparing DOE-owned spent nuclear fuel and high-level radioactive waste for disposition.
2. On December 2nd the Blue Ribbon Commission on America's Nuclear Future held a meeting in Washington, D.C. to discuss the Disposal, Transportation and Storage, and Reactor and Fuel Cycle Subcommittees on their proposed resolutions to the public comments received from the five nationally held meetings seeking stakeholder feedback. Although all three subcommittees proposed a number of edits to their reports to address some of the recurring themes, only the Transportation and Storage Subcommittee proposed a new key recommendation based on public input. The new recommendation advocated the prompt development of programs to support a national shipping campaign of used nuclear fuel in concert with states and tribes while ensuring appropriate funding and assistance for those activities. The basis of the recommendation was motivated by the decade long lead times to plan, prepare, design, fabricate and test before waste can be accepted for shipment. The Ad Hoc Committee on the comingling of commercial and defense-related wastes informed the Commission that it required additional time to render a recommendation. Copies of the agenda and recommendation are attached.
3. On December 4th the Union of Concerned Scientists (UCS) sent a letter to the Nuclear Regulatory Commission commenting on the NRC's draft guide for the security associated with spent fuel, high-level waste and greater than Class C storage facilities. The letter was a supplement to the original

- set of comments presented by the UCS on October 25, 2011. The UCS emphasized their belief that the security measures should not be bound by current design basis threats but rather anticipate future threats, especially with dry cask storage for decades. The UCS also affirmed their support for a dose based approach to radiological sabotage as opposed to limiting the sabotage based on public doses being below regulatory limits at a specified distance. A copy of the letter is attached.
4. On December 5th the states of Washington and South Carolina, Aiken County in South Carolina, Nye County in Nevada, the three business leaders from the Tri-City area near Hanford, Washington, and the National Association of Regulatory Utility Commissioners filed a writ of mandamus (mandate) with the U.S. Court of Appeals for the District of Columbia over the Nuclear Regulatory Commission's unreasonable withholding of agency action on the Yucca Mountain license proceedings. The petition requested the Court to direct the NRC to resume the licensing proceedings within 30 days and to approve or disapprove the license application within 14 months.
 5. On December 7th the quarterly conference call of the Federal Energy Regulatory Commission rate case settlement briefing took place with representatives from the states of Connecticut, Maine and Massachusetts. The briefing provided the status of the two nuclear waste lawsuits against the federal government. The Phase I lawsuit, which awarded Maine Yankee about \$81 million, was being appealed by the Department of Justice (DOJ). Oral arguments were heard in November and a decision is expected in six months. The second suit went to trial in October and the Judge allowed a limited window for the DOJ to reopen the records. Further briefs were scheduled for next year. Other updates were provided on national activities, such as the Blue Ribbon Commission's meeting in Boston, Congressional efforts and hearings on budget proposals to address the Yucca Mountain Project, the Appeals Court ruling that litigation on the Yucca Mountain Project was ripe based on the Nuclear Regulatory Commission's (NRC) Order suspending the Yucca licensing proceedings, the NRC's activities on the new security rule for spent fuel storage facilities and extended storage regulations, the efforts of the Nuclear Waste Strategy Coalition and Nuclear Energy Institute, the Council of State Governments extensive involvement in the BRC meeting held in Boston, and the National Association of Regulatory Utility Commissioners. Regional activity included that of the New England Council.
 6. On December 7th the Chairman of the Nuclear Regulatory Commission sent a letter to the White House's Chief of Staff responding to the issues raised by the four Commissioners. The Chair disputed and rebutted the accusations. He expressed his willingness to improve communications with the other Commissioners. A copy of the letter without the attachments is attached.
 7. On December 8th the Nuclear Waste Technical Review Board (NWTRB) issued a letter to the Department of Energy (DOE) on their comments on a technical report prepared for the DOE. The NWTRB had earlier issued a report which had highlighted the lack of data with certain spent nuclear fuel. The Board believed the gap issue needed to be addressed to establish a technical basis for safely extending dry cask storage and spent nuclear fuel retrieval. The Board provided additional comments on such topics as hydride cracking degradation, transportation of the spent nuclear fuel, the need for more cask demonstration and fuel inspection projects, establishing baselines prior to dry cask storage for future comparative purposes, factoring in international experience, cladding oxidation, degradation mechanisms that interact or occur simultaneously, and internal as well as external monitoring of the used fuel conditions. A copy of the letter is attached.
 8. On December 9th the Chair of the House's Committee on Oversight and Government Reform sent a letter to the White House's Chief of Staff raising serious concerns over the Chairman of the Nuclear Regulatory Commission (NRC) leadership ability and management style. The letter listed five allegations raised by four Commissioners against the NRC Chairman. The Committee Chair

requested that the White House appear at a December 14th Committee hearing to relate what actions the White House took upon discovery. Copies of the letter and the four Commissioners' October 13th correspondence are attached.

9. On December 12th the Nuclear Energy Institute filed an amicus brief (friends of the court) in support of the petitioners lawsuit against the Nuclear Regulatory Commission (NRC) and its Chairman, Gregory Zaczko. The petitioners from the states of Washington and South Carolina, Aiken County in South Carolina, Nye County in Nevada, the three business leaders from the Tri-City area near Hanford Washington, and the National Association of Regulatory Utility Commissioners filed suit against the NRC for unreasonably withholding agency action on the Yucca Mountain licensing proceedings.

10. On December 12th the Chief of Staff for the White House sent a letter to the Chair of the House Committee on Oversight and Government Reform responding to the Chair's December 9th letter on management issues at the Nuclear Regulatory Commission. The Chief of Staff outlined his actions since being made aware of the discord between the Commissioners and the NRC Chairman. The Chief of Staff admitted that, while there were tensions and disagreements amongst the NRC Commissioners, the management differences had not jeopardized the "Commission's ability to fulfill its mission" of safety and security. On the same day the Chief of Staff also sent a letter to the NRC Commissioners urging the Commissioners to improve internal communications. Copies of the letters are attached.

11. On December 12th the Chairman of the Nuclear Regulatory Commission (NRC) responded to the Chair of the House Committee on Oversight and Government Reform's December 5th letter. The NRC Chairman's response addressed two questions posed in the initial December 5th letter on the Commission's values and culture. In both responses Chairman Jaczko provided concrete examples to support his position. A copy of the letter is attached.

12. On December 13th the House of Representatives' Committee on Oversight and Government Reform issued an investigation report, entitled, "A Crisis in Leadership". The report concentrated on the Committee's investigation of the Nuclear Regulatory Commission's (NRC) actions during three events:

- The termination of the NRC's technical review of the Department of Energy's license application to construct a geologic repository at Yucca Mountain,
- The emergency response to the reactor accidents in Japan, and
- The assessment of the lessons learned from the Japanese incident.

The report listed fourteen findings and how those findings led to the conclusion that the actions of Chairman Jaczko were damaging the NRC.

13. On December 13th the State participated in a Nuclear Regulatory Commission (NRC) webinar that informed stakeholders on its Waste Confidence Decision and Rule. The purpose of the webinar was to inform stakeholders on the basis and assumptions that went into its Waste Confidence Rule and to fulfill the NRC's National Environmental Policy Act. The Rule was necessary to allow for the construction and licensing of new nuclear power plants. Stakeholders queried the NRC on its policy and whether it was not a de facto disposal option. The NRC noted that they were issuing a draft Environmental Impact Statement (EIS) to address future potential scenarios, such as natural events and terrorism impacts.

14. On December 14th the State participated in a follow-up Nuclear Regulatory Commission (NRC) webinar that informed stakeholders on a complimentary initiative, the technical feasibility of

extended dry cask storage at reactor sites for potentially up to several hundred years. The NRC webinar informed stakeholders of the NRC's three phase approach. The first phase would identify technical and regulatory issues associated with extended spent fuel storage. The second phase would perform focused research on the technical issues, such as safety functions and technical challenges to those safety functions, and develop regulatory options as needed. The final phase would establish the revisions to the regulatory framework.

15. On December 15th the Chair of the House Committee on Energy and Commerce and the Chairs of the Committee's three Subcommittees (Energy and Power, Oversight and Investigations, and Environment and the Economy) co-signed a letter sent to the Chairman of the Nuclear Regulatory Commission requesting that he provide documentation in connection with the Committee's on-going investigation of the Nuclear Regulatory Commission. A copy of the letter without the instructions for responding to document requests is attached.
16. On December 16th the House passed a 2012 catch-all spending bill that contained no funding for the Yucca Mountain repository site. When House Republicans attempted to prevent the Nuclear Regulatory Commission from closing out its Yucca licensing activities, the attempt was blocked by Senate Majority Leader Harry Reid from Nevada. This is the second consecutive year that funding for Yucca mountain has been zeroed out. A table listing the House and Senate nuclear energy funding requests for Fiscal Year 2012 with the final omnibus funding totals is attached.
17. On December 20th the Department of Justice (DOJ) responded to the Blue Ribbon Commission's December 5th inquiry. The DOJ provided two tables listing the status of the lawsuits against the federal government on the Department of Energy's breach of contracts with the nation's nuclear utilities. Table 1 recorded that there was \$6.4 billion in claims with approximately \$2 billion paid out to date. The DOJ response failed to mention that the \$6.4 billion is based on those utilities that have accepted the Exelon framework settlement, which amounts to 30 of the 118 reactors. According to the Department of Energy's (DOE) Director of the Office of Standard Contract Management the federal government's October 26, 2011 liability estimate was much higher, \$20.8 billion. Only 26 reactors have accepted the DOE's new framework settlement or one time settlement amounting to an additional \$4.4 billion in claims. The remaining 52 reactors have not accepted the DOE's settlement offers. The liability for the remaining reactors was estimated at \$10 billion. The \$20.8 billion is predicated on the DOE's estimated "last year of pickup date" for each reactor based on the Yucca Mountain license application using the concept of "oldest fuel first". In the Exelon settlement model the DOE's calculated average cost amounted to \$2.5 million per storage year, which is much less than the current costs of about \$8 million to operate and maintain the storage facility at Maine Yankee. A copy of the letter is attached.
18. On December 21st the Nuclear Waste Strategy Coalition (NWSC) held a conference call to update its membership on congressional activities, litigation before the Appeals Court, and activities of the Blue Ribbon Commission and the Nuclear Regulatory Commission (NRC). The congressional activities discussed centered around the discord between the Commissioners and the Chair of the NRC and the upcoming House and Senate hearings on that rift. The litigation issues involved those suing the NRC for inaction on the Yucca Mountain proceedings and the second case dealing with the suspension of nuclear waste fund fees until an assessment is performed by the Department of Energy. The Court is expected to hear oral arguments on May 2nd for the Yucca issue and April 13th on the fee case. There was much discussion on the Blue Ribbon Commission's December 2nd meeting and the revisions anticipated to reflect the public's input from the five national stakeholder meetings. The NWSC is an ad hoc organization of state utility regulators, state attorneys general, consumer advocates, electric utilities and associate members, that includes 40 organizations in more than 30 states.

19. On December 22nd the Nuclear Regulatory Commission (NRC) issued an order declining to decide the Timbisha Shoshone Tribal's Council petition to be recognized as the sole authorized representative of the Timbisha Shoshone Tribe in the Yucca Mountain license proceedings. Since the Yucca Mountain proceedings have been suspended the Commission declined but did note that if the proceedings are reactivated then the Tribal Council could reinstate its petition.

20. On December 25th the Duluth News Tribune published an article that indicated with the closing of the Yucca Mountain Project scientists from the Sandia National Laboratory were now looking at granite rock formations in northern Minnesota and Wisconsin as potential hosts for a future nuclear waste repository. The report also eyed the granite deposits from Georgia to Maine as potential sites for long term nuclear waste disposal. Both the East and Midwest areas exhibit geological stability and low permeability, favorable characteristics for siting a nuclear waste repository. Of the twelve foreign countries with spent nuclear fuel or high-level waste nine are considering hosting nuclear waste repositories in granite.

21. On December 30th the Nuclear Regulatory Commission (NRC) issued a draft report for comment entitled, "Background and Preliminary Assumptions for an Environmental Impact Statement – Long-Term Waste Confidence Update". Due to the closure of the Yucca Mountain Project, the NRC anticipated that spent nuclear fuel would be stored longer than originally intended at reactor sites. The Commission updated its Waste Confidence decision and rule in December 2010 and directed the NRC staff to develop a longer-term update, supported by an environmental impact statement (EIS) that would account for the impacts of storage beyond a 120 year timeframe. The staff is seeking public feedback on the agency's preliminary plans in order to ensure the preliminary EIS scope described in the report considers the significant factors related to the longer-term storage of spent nuclear fuel and high-level waste.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

December 5, 2011

Mr. James Connell
Site Vice President
Maine Yankee Atomic Power Co.
321 Old Ferry Road
Wiscasset, ME 04578-4922

RE: Groundwater radiological monitoring

Dear Mr. Connell:

We are in receipt of your responses to the State's comments on your fifth and final groundwater radiological monitoring report.

Your responses were reviewed internally by radiation specialists at the Department of Health and Human Services. Although they noted that a few responses could have been further amplified, they had no further technical inquiries. Since this is the fifth and final groundwater radiological report, it appears that any value added from further expanded comments would be very minimal. Therefore, the State accepts Maine Yankee's responses and considers all tasks associated with the post decommissioning groundwater radiation monitoring agreement (sampling, analyses, and reporting of the results) at the former Maine Yankee nuclear power plant site as being satisfactorily completed.

Should you have further questions, please feel free to contact me at 287-5618.

Sincerely,

Harold D. Nilsson
Environmental Specialist

Cc: Rob Peale
Pat Dostie
Scott Whittier
Jay Hyland
Stacie Ladner

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207)760-3143

**Blue Ribbon Commission on America's Nuclear Future
Agenda**

December 2, 2011

**JW Marriott Hotel
1331 Pennsylvania Avenue NW
Washington, DC**

Open Meeting – Salons F&G (Ballroom level)

9:30 a.m.	Open meeting/review agenda	Tim Frazier, DOE DFO
9:35 a.m.	Opening remarks	Honorable Lee Hamilton General Brent Scowcroft Commission members
9:45 a.m.	Review of public comments and proposed resolution – Disposal subcommittee	Commissioner Hagel Commissioner Lash
10:45 a.m.	Break	
11:00 a.m.	Review of public comments and proposed resolution – Transportation and Storage subcommittee	Commissioner Meserve Commissioner Sharp
12:00 noon	Lunch	
1:00 p.m.	Review of public comments and proposed Resolution - Reactor & Fuel Cycle subcommittee	Commissioner Domenici Commissioner Peterson
2:00 p.m.	Presentation of recommendation of the Ad hoc subcommittee of Commingling of Wastes	Commissioner Macfarlane
3:00 p.m.	Break	
3:15 p.m.	Public Comment	
4:30 p.m.	Adjourn	

Transportation and Storage Subcommittee -
Addressing Comments on the Draft Reports

December 2, 2011



BLUE RIBBON COMMISSION
ON AMERICA'S NUCLEAR FUTURE

Proposed New Key Recommendation on Transportation

- *“Prompt initiation of programs to prepare for future large-scale transport of spent nuclear fuel and high-level waste to consolidated storage and disposal facilities, including implementing transportation-related recommendations issued by the National Academies in 2006, undertaking planning activities with potentially affected states and tribes, and providing funding and technical assistance for related activities.”*



**BLUE RIBBON COMMISSION
ON AMERICA'S NUCLEAR FUTURE**

December 4, 2011

Mr. Philip G. Brochman
Division of Security Policy
Office of Nuclear Security and Incident Response
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

On behalf of the Union of Concerned Scientists, I appreciate the opportunity provided by the Nuclear Regulatory Commission (NRC) to review and comment on DG-5033, "Security Performance (Adversary) Characteristics for Physical Security Programs for 10 CFR Part 72 Licensees." UCS submitted non-public comments on October 25, 2011. However, we would also like to supplement those comments with a public statement.

I have reviewed the public comments of the Nuclear Energy Institute and the Decommissioning Plant Coalition and strongly disagree with some aspects of their characterization of DG-5033. Contrary to their assertions, in my view DG-5033 is clearly bounded by the adversary characteristics for the design basis threat of radiological sabotage at power reactors as described in Regulatory Guide 5.69 and consequently is fully consistent with the Commission's direction in SRM-SECY-07-0148, "Independent Spent Fuel Storage Installation Security Requirements for Radiological Sabotage."

Given the delays in the U.S. geologic repository program, it is likely that a large quantity of spent fuel will remain in interim storage, much of it in dry casks, for many decades to come. While UCS believes that the safety and security risks of dry cask storage are generally far smaller than the risks posed by dense-packed pool storage, this will depend on the development of stringent regulatory standards for ISFSI safety and security that will apply over extended time periods. The institution of a security regime for ISFSIs that is based on conservative and forward-thinking threat assumptions is a prudent action that will help to avoid the need to repeatedly upgrade ISFSI security features to cope with the steady increase in adversary capabilities over time. To this end, I believe that the Commission's requirement that DG-5033 be bounded by the current DBT for radiological sabotage of power reactors inappropriately limits the threats that should be considered in developing a protective strategy for ISFSIs. However, the staff has done a commendable job of identifying the plausible threats against ISFSIs that are contained within the power reactor sabotage DBT.

As I have stated in previous remarks, UCS supports a regulatory approach that would require ISFSIs to be protected against the design basis threat of radiological sabotage, defined as "fuel damage," and does not support an approach that would allow adversaries to cause some fuel damage provided that doses to the public remain below regulatory limits. I note that DG-5033 would be compatible with either a DBT-based or dose-based approach. In order to make DG-5033 relevant to a dose-based approach, however, NRC needs to document technically well-founded relationships between the methods of attack described in DG-5033 and the potential radiological releases that could result. Any analysis used to justify a defensive strategy other than "denial of access" will have to be based on well-validated methods.

Sincerely,

Edwin S. Lyman, PhD
Senior Scientist
Global Security Program
Union of Concerned Scientists
1825 K St, NW Ste. 800
Washington, DC 20006



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 7, 2011

The Honorable William M. Daley
Chief of Staff
The White House
Washington, DC 20500

Dear Mr. Daley:

I have read the letter provided to you by my colleagues on October 13th and have appreciated my discussions with you since then. I provide the following response to the issues raised to your attention.

I have enjoyed many of my interactions with my new colleagues over the last year and a half, and with about the same number of years of experience on the Commission as all four of them added together, I have a clear understanding and profound appreciation for the Commission structure of government. My sole and passionate focus since I came to the agency in 2005 has been on nuclear safety and security and I have used all of my abilities and the fullest extent of my authorities, first as a Commissioner and now as the Chairman, to further that vital mission.

Unfortunately, all too often, when faced with tough policy calls, a majority of this current Commission has taken an approach that is not as protective of public health and safety as I believe is necessary. On multiple policy issues, a majority of the Commission has dismissed my policy views, as well as the recommendations of the technical staff, public interest groups, and Members of Congress and established policies that have loosened the agency's safety standards. While I personally worry about the long term affect those decisions will have on the safety and security of the industry we regulate, I hold no personal animosity toward my colleagues for their policy views. The statutes governing the NRC clearly state that nuclear safety policy is made by a majority vote of the Commission. I follow the law, I respect the policy duly established by the Commission even if I disagree with it, and I faithfully execute Commission policy as I oversee the staff of the agency.

If there are challenges to the continued effective functioning of the Commission as my colleagues claim, it does not arise from our sometimes stark policy differences, but rather from the lack of understanding the current Commissioners have of their statutory roles at the agency. As the statutes governing the NRC make clear – the duties of the Commission are policy-making, rulemaking, and adjudications. *All other functions* were transferred to the NRC Chairman under the Reorganization Plan No. 1 of 1980 (see attached). This dramatic change was made because the President and the Congress recognized after the accident at Three Mile Island that diffuse leadership of five people responsible for managing the agency was a real threat to strong and effective safety regulation.

As the President's Plan transmittal letter to Congress for its consideration stated "placing management responsibilities in the Chairman would result in greater attention to developing and implementing nuclear safety policies and to strict enforcement of the terms of licenses granted by the Commission.....Freed of management and administrative details, the Commission could then concentrate on the purpose for which that collegial body was created – to deliberate on the formulation of policy and rules to govern nuclear safety and to decide or oversee the disposition of individual cases."

All of the issues detailed in the letter you received from my colleagues have their origin in individual Commissioners disagreeing with management decisions I have transparently made to keep the staff as focused on safety as I can possibly keep them. I seek to consult with my colleagues on a great number of the decisions I make whether they are policy or management related. I do not always agree with their suggestions and advice, however, and that has led to a circular claim that if I exercise my statutory authorities I am somehow abusing them.

I have attached a detailed description of the facts surrounding the issues my colleagues raised to your attention, but to address a few of the more specific and absurd claims here, I can assure you of the following:

- There is no chilled work environment around me. I have been a champion of an open and collaborative work environment and I have publicly praised staff who have the courage to state their differing opinions. Morale at the NRC is very healthy as demonstrated by the fact that our employees have rated the agency as one of the best places to work in the entire federal government in OPM and Partnership for Public Service initiatives, including ranking the NRC number one in leadership and job satisfaction.
- I have and will continue to work very closely with the staff on the formulation of policy proposals for the Commission. I do this because my responsibility under the law as the principal executive officer of the Commission is for "developing policy planning and guidance for consideration by the Commission." It is entirely appropriate and necessary for me to work with the staff of the agency that I manage to carry out that function.
- I have never attempted to intimidate the Advisory Committee for Reactor Safeguards nor has any member of that Committee expressed concerns about our interactions to me. All of my interactions with ACRS have been appropriate and to ensure the NRC staff would be able to carry out their responsibilities.
- I do not ignore the will of the Commission on policy matters. Certainly interpretation and execution of policy is a complex endeavor and I would be happy to engage my colleagues if they have concerns about any specific issues. I will continue to faithfully uphold my statutory obligation to be governed by "the general policies established by the Commission" and regularly consult with the General Counsel to ensure I am doing so.

Finally, I would like to address the accusation that I have shown my colleagues such disrespect that the Commission no longer functions effectively. I have a seven year tenure of working collegially and productively with many different Commissioners, Members of Congress,

Administration officials, licensees and members of the public. The challenges being highlighted by the current Commissioners began with their arrival at the Commission a year and a half ago. I am disappointed to note that those differences were exacerbated by the lack of my fellow Commissioners' understanding of their role in an emergency during agency's response to the disaster in Japan.

As Chairman, I was the one who attended the White House National Security Council meetings to address the situation in Japan. As the chief spokesperson for the agency, I was the one who spoke from the White House press briefing room to reassure the American people. As the principal executive officer, I was the one who managed the agency's emergency staff and made recommendations to the Executive Branch about what protective actions we would take if an event like this were to occur in the United States. I did this not out of any desire to limit the roles of my colleagues but rather to faithfully carry out my statutory responsibilities. To act in any other manner would not have been consistent with the statute or in the best interest of public health and safety. As the President noted in the Reorganization Plan transmittal letter to Congress, "Experience has shown that the Commission as a whole cannot deal expeditiously with emergencies or communicate in a clear, unified voice to civil authorities or the public.... The Plan would correct this situation by specifically authorizing the Chairman to act for the Commission in an emergency."

Even though it was not possible to involve my four colleagues in the operational management of the event, I strove to keep them fully informed – providing information to them multiple times each day including personally briefing them on developments. I fully appreciated the fact that changing nuclear safety regulations in the U.S. in response to the events in Japan was a Commission responsibility and so a short 10 days after the event, I held a Commission meeting and asked my colleagues to formally vote on the NRC's approach to learning the lessons of Fukushima. Two days later the Commission unanimously approved my proposal for establishing a Lessons-learned Task Force, something the President had also called upon the agency to do.

There have always been disagreements among Commissioners. Conflict is inherent in the Commission structure of government and this is not the first time that confusion over differences between the roles and responsibilities of the NRC Chairman and Commissioners has caused communication problems. The NRC Inspector General detailed these challenges in a 1999 report on the structure of the Commission. If there is anything unique at this point in the history of the agency in my opinion, it is the Commissioners' refusal to collegially discuss and attempt to resolve disagreements internally. Since their arrival, I have invited my colleagues to join me in informal Commission discussions to improve communications, offered to participate in facilitated Commission meetings with a trusted third party to promote a better dialogue, and proposed a more transparent voting process so that the Commission could conduct more of its business in public. A majority of my current colleagues have declined to participate in any of these initiatives.

But all of the preceding discussion pales in comparison to the importance of nuclear safety and security. Despite this internal discord, I have ensured the Commission has the tools and

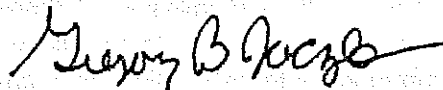
information it needs to continue to make decisions and that the agency staff continues to successfully execute the policy established by the Commission. On that front I am pleased to report tremendous progress. This year the Commission has issued 92 formal decisions, held 38 public Commission meetings, 10 closed Commission meetings, and met for 14 planning sessions to discuss our overall agenda. Because of the work of the Commission and the staff, the agency has made tremendous progress on issues from fire safety, to emergency preparedness, to a safety culture, not to mention license reviews for new nuclear reactors, and the responsible closeout and transparent documentation of the Yucca Mountain license review. The agency dealt with the nuclear safety implications of the Virginia Earthquake and Midwest flooding, and devoted considerable effort to responding to the Fukushima event, including developing a substantive set of safety requirements for US plants to ensure such an unlikely severe accident could not happen here. Please see attached information highlighting many of the accomplishments of the NRC over the past year.

I continue to be honored by the opportunity to serve the American people as an NRC Commissioner and as the Commission Chairman. I continue to be unbelievably proud of the NRC staff and their single-minded focus on the agency's mission. I continue to be proud of what the agency has been able to accomplish for public health and safety.

I do apologize for any distraction the disagreements we have had at the Commission, and which would have been better addressed through internal dialogue, may have caused you. We have dealt with some of the most controversial issues ever put before the agency over the past year and we sometimes argued vigorously over them. As the Chairman of our collegial body, I take responsibility for improving the level of our dialogue. I will continue to reach out to my Commission colleagues in an effort to improve our communication and I will continue to keep them fully informed.

I assure you that I come to work every day to do my job better than the day before. The civil servants I am privileged to work alongside deserve no less. I will continue to manage the NRC staff in a manner that is as protective of public health and safety as established Commission policy will allow and to be as open and transparent as we can. I would be happy to continue our dialogue on these matters at your convenience if you have any additional questions.

Sincerely,



Gregory B. Jaczko

Encl: Transmittal letters and Reorganization Plan No. 1 of 1980
Facts about issues raised
Agency Accomplishments slides



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

December 8, 2011

Dr. Monica Regalbuto
Deputy Assistant Secretary
Fuel Cycle Technologies
Office of Nuclear Energy
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585-0620

Dear Dr. Regalbuto:

On behalf of the U.S. Nuclear Waste Technical Review Board, I am pleased to provide comments on the draft report, *Gap Analysis to Support Extended Storage of Used Nuclear Fuel*, which was prepared by National Laboratory staff for the Used Fuel Disposition Campaign of the U.S. Department of Energy (DOE) Office of Nuclear Energy and issued on June 30, 2011.

As you know, the Board issued its report, *Evaluation of the Technical Basis for Extended Dry Storage and Transportation of Used Nuclear Fuel*, in December 2010. In it, the Board recommended that a number of topics related to the safety of spent nuclear fuel (SNF) after extended dry-cask storage and subsequent transportation of the SNF be addressed in future research. The lack of data related to the storage and transportation of high-burnup SNF was noted in particular. The Board believes that the draft *Gap Analysis* report identifies issues that should be addressed in establishing a technical basis for safe extended dry-cask storage and retrieval of SNF and, in general, sets appropriate research priorities for resolving the issues. More-detailed comments and Board recommendations are presented in the following paragraphs.

The Board understands the utility of the approach used in the draft *Gap Analysis* report for assigning research-priority designations of low, medium, or high to identify the essential and urgent data gaps. However, the Board considers it important that the methodology, including the priority-setting process, be applied to the important technical questions. The Board notes that the transportation element of SNF management was not included in this gap analysis; thus we look forward to a similar assessment of research needs for transportation of SNF in an integrated research program covering both storage and transportation.

Our review of the draft *Gap Analysis* report indicates that the significant research priorities identified in the Board report relating to degradation mechanisms and "cross-cutting" research needs¹ were designated in the draft *Gap Analysis* report as medium or high research

¹ For example, the "cross-cutting" needs for determining fuel-temperature profiles over time, better quantifying the amount of residual water present after drying, carrying out additional cask-demonstration and fuel-inspection projects with representative dry-stored fuel, developing concepts for fuel-transfer options, and developing advanced monitoring and instrumentation of casks.

priorities. The Board is interested in learning more about why the delayed hydride cracking degradation mechanism was set as a medium and not a high research priority.

The Board agrees with the high priority assigned in the draft *Gap Analysis* report to developing the technical basis for taking burnup credit.² This crosscutting issue plays a very important role in all aspects of SNF management, including storage, transportation, and disposal.

The U.S. Nuclear Regulatory Commission and cask vendors currently depend on results from the CASTOR V/21 Dry Cask Storage Characterization Project³ at Idaho National Laboratory for technical support in considering license extensions for dry-cask storage. The draft *Gap Analysis* report states that the CASTOR V/21 cask and fuel conditions differ in significant ways from those typical for fuel in dry storage. In particular: the fuel was loaded into the demonstration cask dry (and not in a SNF pool as is typical). Consequently, the cask did not require drying and did not have the large temperature swings that occur during vacuum drying; the retention of residual water after drying; and the loaded SNF had assembly average burnups of approximately 36 GWd/MTU, which is lower than is typical. The Board thus supports the caution stated in the draft *Gap Analysis* report that the CASTOR V/21 demonstration results may not represent the cask and fuel conditions of all the commercial fuel currently in dry-cask storage in the United States.

This situation underscores the need to carry out additional cask-demonstration and fuel-inspection projects. The Board supports the recommendation to reexamine the CASTOR V/21 cask and contents along with the REA-2023 cask system stored at Idaho National Laboratory. The Board also recommends examining other representative dry-storage cask systems or developing a cask-demonstration project where a number of representative fuel assemblies of interest (including various burnups) are placed in dry storage under typical storage conditions, followed by periodic inspection to monitor changes in the state of the fuel and the storage system's components.

The Board would like to make several related recommendations. The Board report points out the importance of characterizing SNF before dry storage to establish a baseline against which to monitor changes in fuel condition during drying and extended storage. The Board recommends that a sample of representative fuel assemblies of various burnups be characterized to the extent possible before they are loaded in different casks. The casks then should be opened and inspected periodically during the storage period at a facility capable of such inspections to identify changes from the baseline conditions.

The Board report also discusses the possibility of degradation mechanisms that interact or mechanisms that may occur simultaneously. Because coupled effects are difficult to model or fully anticipate this is another reason for opening and examining representative dry-storage systems periodically. In addition to investigating the work on storage gap analysis being done in other countries, the Board encourages DOE to collect international data on SNF that has been stored in casks or canisters and examined after periods of storage to develop a more complete

² Burnup credit was beyond the scope of the Board Report.

³ After more than 14 years of dry storage, when the CASTOR V/21 cask was opened, almost no degradation of PWR fuel rods, cask, or internal cask parts was observed.

centralized database of the condition of stored SNF and storage systems. The collection of the international database might affect the research needs and priorities.

The Board notes that the draft *Gap Analysis* report identifies a degradation mechanism involving cladding oxidation that occurs during high-humidity conditions in the cask. The draft *Gap Analysis* report indicates that a high-humidity condition could be caused by insufficient drying before cask sealing, the loss of helium cover gas and subsequent replacement with humid air, or mistaken filling with humid air. Not clear from the discussion in the draft *Gap Analysis* report is which scenarios are considered likely to lead to the potential fuel-side cladding degradation in storage systems. In its report, the Board emphasizes the importance of ensuring the presence of the helium cover gas to limit degradation mechanisms and recommends the development of technologies for monitoring the presence of helium in the canisters or casks over time. Accordingly, the Board supports research by DOE to quantify the amount of residual water that remains in casks after drying and to develop and implement new monitoring instrumentation. When monitoring instruments become available, they could be installed and tested as a part of the new characterization program for dry-cask storage.

The draft *Gap Analysis* report cites a number of references to the Board report and indicates that the Board report does not discuss degradation mechanisms for several named components located within welded casks or bolted containers. Although the Board report does not specifically address these mechanisms as individually applied to specific components, it does consider them in the discussion of general categories of metal and nonmetal internal components of a dry-storage system. The Board notes and endorses the need to investigate these degradation mechanisms separately for distinct types of internal cask components as is done in the draft *Gap Analysis* report.

Finally, the Board understands that a revision of the draft *Gap Analysis* report is planned for FY 2012 that will include identification of research priorities related to transportation of SNF following extended storage. The FY 2012 revision also will include a more comprehensive evaluation of technical issues raised in gap-analysis reports issued by the NRC, EPRI, the Board, and other organizations. The Board looks forward to the opportunity to review those future revisions to the draft *Gap Analysis* report and supports DOE in identifying the research and priorities necessary to develop an improved safety case for extended dry-cask storage, retrieval, and transportation of SNF.

Sincerely,

{Signed by}

B. John Garrick
Chairman

cc:

Dr. Peter Lyons, Acting Assistant Secretary for Nuclear Energy

Dr. William Boyle, Director, Office of Used Nuclear Fuel Disposition, Research and Development

DAHRELL E. ISSA, CALIFORNIA
CHAIRMAN

DAN BURTON, INDIANA
JOHN L. MICA, FLORIDA
TODD RUSSELL PLATTS, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
PATRICK MCHEENRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
CONNIE MACK, FLORIDA
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
ANN MARIE BUERKLE, NEW YORK
PAUL A. GOSAR, D.D.S., ARIZONA
RAUL R. LABRADOR, IDAHO
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DEJARLAI, M.D., TENNESSEE
JOE WALSH, ILLINOIS
TREY GOWDY, SOUTH CAROLINA
DENNIS A. ROSS, FLORIDA
FRANK C. GUINTA, NEW HAMPSHIRE
BLAKE FARENTHOLD, TEXAS
MIKE KELLY, PENNSYLVANIA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

PHONE (202) 225-5074
FACSIMILE (202) 225-3974
TELETYPE (202) 225-5051
<http://oversight.house.gov>

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

EDOLPHUS TOWNS, NEW YORK
CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
DENNIS J. KUCINICH, OHIO
JOHN F. TIERNEY, MASSACHUSETTS
WAL LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
MIKE QUIGLEY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
BRUCE L. BRALEY, IOWA
PETER WELCH, VERMONT
JOHN A. YARMOUTH, KENTUCKY
CHRISTOPHER S. MURPHY, CONNECTICUT
JACKIE SPEIER, CALIFORNIA

December 9, 2011

The Honorable William L. Daley
Chief of Staff
The White House
Washington, D.C. 20500

Dear Mr. Daley:

It has come to my attention that on October 13, 2011, you received a letter expressing grave concerns about the leadership and management style of Nuclear Regulatory Commission (NRC) Chairman Gregory Jaczko.¹ The letter, signed by all four of Chairman Jaczko's fellow Commissioners, is attached for your ready reference. It alleges that the Chairman's behavior is jeopardizing the ability of the NRC to perform its critical mission. The Commissioners stated:

We believe that [Chairman Jaczko's] actions and behavior are causing serious damage to this institution and are creating a chilled work environment at the NRC. We are concerned that this will adversely affect the NRC's essential mission protect the health, safety and security of the American people.²

Chairman Jaczko's colleagues cited specific examples of his behavior that led them to take the extraordinary step of calling this matter to your attention. In fact, for more than 18 months, the Commission attempted to manage the Chairman's increasingly erratic behavior behind closed doors.³ The Commissioners' efforts to do so were "received only as encouragement for further transgressions."⁴ According to his colleagues, Chairman Jaczko has:

¹ Letter from NRC Commissioners Kristine Svinicki, George Apostolakis, William Magwood IV, and William Ostendorff to White House Chief of Staff William L. Daley (Oct. 13, 2011).

² *Id.* at 1.

³ *Id.* at 2.

⁴ *Id.*

- Intimidated and bullied senior career staff to the degree that he has created a high level of fear and anxiety resulting in a chilled work environment;
- Ordered staff to withhold or modify policy information and recommendations intended for transmission to the Commission;
- Attempted to intimidate the Advisory Committee on Reactor Safeguards, a legislatively-chartered independent group of technical advisors, to prevent it from reviewing certain aspects of NRC's analysis of the Fukushima accident;
- Ignored the will of the majority of the Commission, contrary to the statutory functions of the Commission; and
- Interacted with us, his fellow Commissioners, with such intemperance and disrespect that the Commission no longer functions as effectively as it should.⁵

This letter raises serious questions about Chairman Jaczko's conduct and ability to lead the NRC in a manner befitting the trust placed in him by the President – who designated him – and American citizens – who rely on an efficient and effective nuclear regulator to protect their health, safety and security.

The President has the authority to take action to address these concerns. Chairman Jaczko serves at the pleasure of the President. In addition, under the Energy Reorganization Act of 1974, section 201(e), the President may remove any member of the Commission for “inefficiency, neglect of duty, or malfeasance in office.”⁶ The White House has now been aware of the Commissioners concerns for nearly two months, and the public deserves to understand what actions have been taken and whether the President still believes that Chairman Jaczko is capable of leading the NRC.

The Committee will be exploring these and other concerns at a hearing on December 14, 2011 at 10:00 a.m. To better inform the Committee and the public about how the White House is responding to these allegations, I invite you to designate a witness for our hearing. Although I appreciate the short notice of this request, I am hopeful that given the urgency of this matter, you or a designee will be able to inform the Committee about what is being done to preserve the integrity of the NRC and its mission.

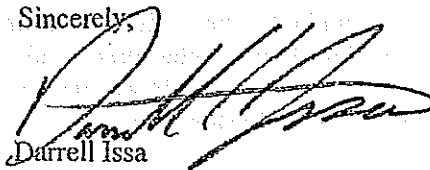
⁵ *Id.* at 1.

⁶ Energy Reorganization Act of 1974, §201(e).

The Honorable William L. Daley
December 9, 2011
Page 3 of 3

Instructions for witnesses appearing before the Committee are contained in the enclosed Witness Instruction Sheet. In particular, please note the procedures for submitting written testimony at least two business days prior to the hearing. We ask that you please contact the Committee by noon on December 12, 2011, to confirm your attendance. If you have any questions, please contact John Ohly of the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa
Chairman

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Member



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

NOT FOR PUBLIC DISCLOSURE

COMMISSIONER

October 13, 2011

The Honorable William L. Daley
Chief of Staff
The White House
Washington, DC 20500

Dear Chief of Staff Daley:

As individual members of an independent regulatory commission, we all took oaths to execute this agency's nuclear regulatory mission and to uphold the institution's values, including its Principles of Good Regulation. Our obligation is not only to the agency and its staff, but also to the American people. It is from that foundation that we write to express our grave concerns regarding the leadership and management practices exercised by Nuclear Regulatory Commission (NRC) Chairman Gregory Jaczko. We believe that his actions and behavior are causing serious damage to this institution and are creating a chilled work environment at the NRC. We are concerned that this will adversely affect the NRC's essential mission to protect the health, safety and security of the American people.

In a long series of very troubling actions taken by Chairman Jaczko, he has undermined the ability of the Commission to function as prescribed by law and decades of successful practice. Since this current Commission was formed some 18 months ago, after the President nominated and the Senate confirmed the three newest members, we have observed that Chairman Jaczko has:

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

Recently, on October 5, 2011, Chairman Jaczko appeared as an invited guest at a periodic meeting of the agency's Executive Director for Operations and other senior career executives. According to multiple reports, his comments reflected contempt for the Commission itself and open disdain for the Internal Commission Procedures, a document that embodies governing principles from the NRC's organic legislation—the Energy Reorganization of 1974 and the Reorganization Plan No. 1 of 1980. These procedures guide the conduct of the work of the Commission.

NOT FOR PUBLIC DISCLOSURE

NOT FOR PUBLIC DISCLOSURE

Hon. William Daley
Page -2-

Over the last 18 months, we have shown Chairman Jaczko considerable deference. Moreover, for the sake of the agency, its staff, and public confidence, we have strived to avoid public displays of disharmony. Unfortunately, our efforts have been received only as encouragement for further transgressions.


We are committed to conduct the work of this agency to the best of our ability and despite the items highlighted above and numerous other troubling actions taken by Chairman Jaczko, we have carried out the work before us and will continue to do so. However, Chairman Jaczko's behavior and management practices have become increasingly problematic and erratic. We believe his conduct as Chairman is inconsistent with the NRC's organizational values and impairs the effective execution of the agency's mission.

We provided Chairman Jaczko our concerns in the attached memorandum.

Sincerely,




Commissioner Kristine L. Svinicki



Commissioner George Apostolakis



Commissioner William D. Magwood, IV



Commissioner William C. Ostendorff

NOT FOR PUBLIC DISCLOSURE



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

NOT FOR PUBLIC DISCLOSURE

COMMISSIONER

October 13, 2011

MEMORANDUM TO: Chairman Jaczko

FROM:

Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

KLS
AP
AM
WO

As you know, many of us have, on occasion, taken issue with your interpretation of the relative role of the Chairman and the Commission, the role of the Chairman and the EDO, and your approach to working with the Commission to lead this agency. Over the past year, these issues, linked with your troubling personal approach to interacting with us and the senior staff, have intensified. This is a matter of serious concern. We have responsibilities relating to the Commission and the NRC staff, and we are accountable to Congress and the American people. It is from this foundation that we write to express our grave concern that your leadership and management practices are causing serious damage to this institution.

First, with respect to your relationship with the Commission, it is not uncommon to have some degree of tension between a Chairman and the members of an independent regulatory commission. But in the present case, your intemperate and disrespectful behavior and conduct towards fellow Commission members is completely unacceptable. A few recent examples include your outburst of temper demonstrated by storming out of an agenda planning meeting while a colleague was speaking, yelling at fellow commissioners on the phone, and termination of an NRC staff detailee's assignment to a Commission office without any advance discussion with the affected Commissioner. Although your relationship with Commissioner colleagues has been a serious problem for some time, it has gotten worse in recent months.

Second, your intimidation and bullying of the NRC staff to do things your way has resulted in a work environment with a chilling effect. While you are a champion of openness in Commission deliberations, you have taken steps to discourage open communication between the staff and the Commission. There are a number of recent examples where you or your office directed the staff to withhold certain views from the Commission or strongly criticized the staff's views. Two recent examples include your direction to the EDO to withdraw the SECY paper on the Fukushima Near Term Task Force Report as well as your strong, ill-tempered criticism of the senior staff's recommendations in the post-Fukushima "21 day" report. While you have communicated to us that your primary motivation in seeking to remove the EDO is based on his lack of communications with you, due diligence with numerous senior staff indicates that your motivation stems from instances where the EDO did not follow your view on what to present to the Commission as the staff's policy position. This impairs the ability of the Commission to function effectively; furthermore, your view of the role of the EDO is fundamentally contrary to that of the Commission and the way the NRC has functioned over the years.

NOT FOR PUBLIC DISCLOSURE

NOT FOR PUBLIC DISCLOSURE

Chairman Jaczko
Page -2-

Third, we are shocked to have received numerous reports from NRC senior staff about your remarks at the October 5 Senior Leadership Meeting. Your comments have been interpreted by those present not only to reflect your disdain for the Internal Commission Procedures, but also your contempt for the Commission. Your remarks to the NRC senior staff undermine the entire Commission. This conduct is of grave concern to us and is absolutely unacceptable.

In response to this persistent situation, we have decided to transmit the attached letter to the White House Chief of Staff to notify him of our serious concerns. We recognize that this is an extraordinary step, but do not believe that you have left us with viable alternatives.

NOT FOR PUBLIC DISCLOSURE

THE WHITE HOUSE
WASHINGTON

December 12, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your letter of December 9, 2011, regarding management issues at the Nuclear Regulatory Commission ("NRC").

As you know, in an October 13, 2011, letter, four NRC Commissioners expressed concerns about the leadership and management practices of the NRC's Chairman, Gregory Jaczko. The Commissioners took issue with the Chairman's interpretation of his role as Chairman and also expressed additional concerns about his management style. I responded promptly to the NRC Commissioners' letter. By letter dated October 17, 2011, I advised the Commissioners and Chairman Jaczko that I intended to meet personally with each of them to discuss the issues raised in the letter. Thereafter, I, along with counsel from the White House Counsel's Office, met individually with each of the Commissioners, the NRC's Executive Director for Operations ("EDO"), and with Chairman Jaczko on two occasions.

The NRC's current structure was adopted by Congress in 1980 and is reflected in the NRC's Reorganization Plan. Congress structured the Commission to have a strong Chairman, who serves as the Commission's chief executive officer and is responsible for its day-to-day operations, and a four-member Commission, which determines broader policies by majority vote. This structure has from time to time led to tensions between Chairmen and Commissioners over the scope of their respective authorities. Those tensions were noted in a 1999 report by the NRC's Inspector General. See (<http://www.nrc.gov/reading-rm/doc-collections/insp-gen/2000/00e-09/responseig.html>) (noting that "opposing interpretations" of the Chairman's authority have led to "less than harmonious interactions" between the Chairman and the Commissioners).

In a letter dated December 7, 2011, Chairman Jaczko provided me with a detailed written response to the allegations raised by the other Commissioners. The Chairman apologized for the distraction caused by the present tensions and has taken responsibility for improving communications among the Commissioners. He has indicated his intention to reach out to his fellow Commission colleagues for that purpose. He has also committed to keep them fully

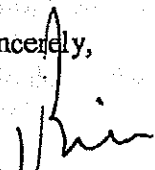
informed, and has proposed that all of the Commissioners meet with a trusted third party to promote a better dialog.

Based on our meetings, we have concluded that while there are tensions and disagreements among the Commissioners, these management differences have not impaired the Commission's ability to fulfill its mission. Indeed, the Chairman, the Commissioners and the EDO have all expressed their strong commitment to fulfilling the agency's mission and to upholding the institution's values, and the White House has confidence in their ability to do so. Indeed, many of the present tensions appear to be rooted in the very structure of the NRC and in disagreements over policy matters that have been before the Commission during Chairman Jaczko's tenure. In a June 2011 report, the Inspector General for the NRC concluded that the current disagreements between Chairman Jaczko and the other Commissioners reflect organizational tensions. After reviewing many of the same allegations as those reflected in the October 13, 2011, letter, the Inspector General concluded that although there are disagreements between the Commissioners and Chairman Jaczko about their respective authorities, Chairman Jaczko acted within his legal authority and members of the Commission always have the ability to bring a particular matter before the full Commission for a vote.

We understand that the management issues referenced by the Commissioners have been referred to the NRC's Inspector General. We believe and presume you agree that the Office of the Inspector General is an appropriate forum for a thorough review of the agency's present governing structure and for the development of any recommendations to improve it.

As for the Committee's hearing this week, we respectfully decline your invitation to provide a witness.

Sincerely,


William M. Daley
Chief of Staff

cc: Honorable Elijah E. Cummings
Ranking Member

**THE WHITE HOUSE
WASHINGTON**

December 12, 2011

The Honorable Gregory B. Jaczko
Chairman
United States Nuclear Regulatory Commission
Washington, D.C. 20555

The Honorable William C. Ostendorff
Commissioner
United States Nuclear Regulatory Commission
Washington, D.C. 20555

The Honorable George Apostolakis
Commissioner
United States Nuclear Regulatory Commission
Washington, D.C. 20555

The Honorable Kristine L. Svinicki
Commissioner
United States Nuclear Regulatory Commission
Washington, D.C. 20555

The Honorable William D. Magwood IV
Commissioner
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Commissioners:

I am writing to you regarding the internal management issues at the Nuclear Regulatory Commission raised in the Commissioners letter to me dated October 13, 2011.

As an initial matter, I would like to thank you again for raising these concerns with me, and for your commitment to fulfilling the agency's important mission to ensure the safe civilian use of nuclear materials. The Nuclear Regulatory Commission has an important mission, and we respect and appreciate your strong commitment to the Commission's work and values.

As you know, upon receipt of the October 13 letter, I arranged to meet personally with each of you so that I would have opportunity to discuss these matters with you. I also met with the agency's Executive Director of Operations. By letter dated December 7, 2011, Chairman Jaczko subsequently responded in writing to the concerns raised in the October 13 letter.

While I recognize that there are tensions and disagreements among the Commissioners, each of you made it clear in your conversations with me that these management differences have not impaired the Commission's ability to fulfill its mission or in any way jeopardized the safety and security of nuclear facilities in the United States.

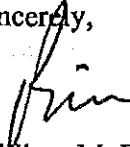
I share your commitment to the mission of the Nuclear Regulatory Commission and agree that sound leadership and management practices are essential to its proper functioning. In our meetings each of you expressed your strong commitment to the agency and to ensuring that it

fulfills its mission. We have confidence in your ability to do so, and urge each of you to make every effort to improve the internal communications at the agency.

The Chairman has committed to improve communications amongst you, including by keeping fellow Commissioners better informed, and has proposed that all of the Commissioners meet with a trusted third party to promote a better dialog. I urge you to pursue such a course of action and to keep me apprised of your progress and, as appropriate, any findings or recommendations of the agency's Office of Inspector General, as I intend to continue to monitor the situation¹.

I have also enclosed for your information my response to a letter I received on this matter from Chairman Issa.

Sincerely,



William M. Daley
Chief of Staff

¹ I understand that NRC management issues have been referred to the agency's Inspector General for investigation, and believe that office is an appropriate forum for a thorough review of the agency's present governing structure and for the development of any recommendations to improve it.

December 12, 2011

The Honorable Darrell Issa
Chairman, Committee on Oversight
and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your letter of December 5, 2011, seeking my opinion on the work environment, values, and culture at the U.S. Nuclear Regulatory Commission (NRC). I am happy to provide my views to you in advance of the Committee on Oversight and Government Reform hearing scheduled for December 14, 2011. In addition, your letter mentions the NRC's all-hands meeting wherein a question was raised by the staff regarding how they should respond to any concerns of abusive behavior or harassment. As I explained to the staff at that meeting, they should be aware of, and mindful of, the potential for inappropriate behavior by any members of the agency. I also reinforced the notion that staff should bring forth any concerns they have to their management, the Office of the Inspector General, or the Office of Small Business and Civil Rights.

1. Do you believe the current work environment at the NRC is consistent with the commission's values and culture? Please provide the basis for, and any examples necessary to inform, your response.

Yes. There are several components to values and culture at the NRC. In conducting all our work, the staff and the Commission adhere to a set of fundamental organizational values: integrity, service, openness, commitment, cooperation, excellence, and respect. These values guide not only our decision making on safety, security, and environmental issues, but also how we perform administrative tasks and interact with our fellow employees and stakeholders. As a responsible regulator with an important safety and security mission, these values guide us in adhering to certain principles in the way we carry out our regulatory activities. We call these our "principles of good regulation," and they include independence, openness, efficiency, clarity, and reliability. In addition, the NRC strives to maintain an open and collaborative work environment that encourages interdependence and the sharing of concerns and differing views without fear of negative consequences. The staff continues to exercise its right to engage in these processes, and during 2011 submitted two formal Differing Professional Opinions and approximately 12 formal Non-Concurrences on documents in the concurrence process.

The most recent barometer of the current work environment at the NRC is the results of the 2011 Office of Personnel Management (OPM) Federal Employee Viewpoint Survey. This effort looks at four categories: leadership and knowledge management, results oriented performance culture, talent management, and job satisfaction. The survey measures employees' perception of whether, and to what extent, their organizations have the types of characteristics typically associated with high-performing successful organizations. The NRC ranked first across the Federal government in all four categories.

In addition to the annual OPM survey that will be conducted again in early 2012, the Office of the Inspector General (OIG) has begun preparations for its next triennial Internal Safety Culture Survey to be conducted next year. This OIG effort is expected to provide additional perspective on the agency's current work environment based on a survey of all employees. We are also continuing to embrace the agency response to the most recent safety culture survey, as well as previous Federal Employee Viewpoint Surveys.

2. During your tenure on the Commission, have you observed a change in the NRC management's commitment to its values and culture? Please specifically address any changes to the work environment in terms of openness and collaboration.

In my time on the Commission, there has been a consistent commitment to our values and maintaining an open, collaborative work environment. If anything, I would say that, with all the challenges we have been confronting during 2011 (e.g., the Fukushima nuclear accident, Midwest flooding, Virginia earthquake, and a tightening fiscal environment), we believe that living the organizational values and maintaining an open, collaborative work environment have never been more important. During this time we have sought to encourage and demonstrate an even stronger commitment to these principles and values in support of successful fulfillment of our agency mission.

Earlier this year, our commitment to the agency's culture was strengthened with the establishment of an Agency Culture Advisory Committee. This group of NRC managers will help to ensure that all agency activities and initiatives intended to support a positive agency culture will be effectively integrated and aligned to achieve maximum impact and success.

I look forward to discussing these matters further with you on December 14, 2011.

Sincerely,

/RA/

Gregory B. Jaczko

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

December 15, 2011

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

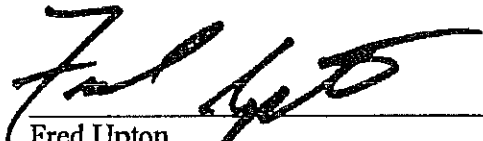
Dear Chairman Jaczko:

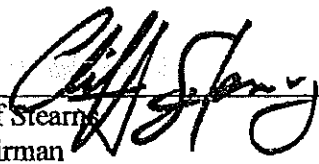
In connection with the Committee on Energy and Commerce's ongoing oversight of the Nuclear Regulatory Commission (NRC) and pursuant to Rules X and XI of the U.S. House of Representatives, we request you provide the following by January 3, 2012:

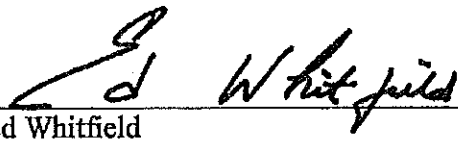
1. All documents provided by the NRC and its individual Commissioners in response to the October 25, 2011, letter from Congressman Edward J. Markey, which requested voting records and all related documents, including, but not limited to, those kept by the NRC Office of the Secretary, for all actions taken or considered by the Commission in response to the issues raised by the events at Fukushima.
2. All documents relating to the NRC's response to the press concerning the Commissioners' October 13, 2011, correspondence to and from the White House and/or the Congressional hearings on December 14 or 15, 2011.
3. An explanation why the Committee on Energy and Commerce Chairman and Ranking Member were not formally notified of the release of sensitive Commission voting records to a Member of this Committee.

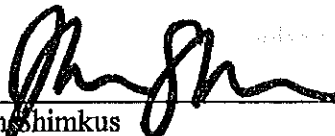
We ask that you follow the instructions for responding to the Committee's document requests, included as an attachment to this letter. We appreciate your prompt attention to this request. Should you have any questions, you may contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

Sincerely,


Fred Upton
Chairman


Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations


Ed Whitfield
Chairman
Subcommittee on Energy and Power


John Shimkus
Chairman
Subcommittee on Environment and the Economy

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

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

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

Nuclear Energy Funding (in millions of dollars)

	FY 2012 House Request	FY 2012 Senate Approps	Omnibus Funding Bill
Nuclear Energy, Science And Technology	733.6	583.8	768.6
Program Direction	92	86.2	91
SMR Licensing Program	67	0	67
Reactor Concepts R&D	137 ^a	31.8	115.5 ^a
Radiological Facilities Management	49 ^c	69.8	69.8 ^b
University Programs	5	0	5
Nuclear Energy Enabling Technologies	95 ^d	68.8 ^e	74.8 ^c
Fuel Cycle R&D	132	187.91	187.3 ^d
Int'l Nuclear Energy Cooperation	3	3	3
Innovative Technology Loan Guarantee Program			
Loan Cap, Nuclear Facilities	18,500	18,500	18,500 ^e
Loan Cap, "Front End" Fuel-Cycle Facilities	0	0	0
Administrative Expenses	0	0	0
Nuclear Waste Disposal	25	0	0
Nuclear Waste Fund	25	0	0
Defense Nuclear Waste Disposal Funds	0	0	0
U.S. Nuclear Regulatory Commission	1027.2	1027.2	1027.2^f
Nuclear Waste Fund	10	0	0

(a) Includes support for small reactors (\$28.6 million) LWR sustainability (\$25 million) and NGNP (\$40 million)

(b) Includes \$4.9 million in Fiscal Year 2012 for research reactors

(c) Includes \$24.3 million for modeling and simulation hub and \$36 million for crosscutting technologies

(d) \$60 million for Used Nuclear Fuel Disposition; \$7 million to characterize potential strategic repository media; \$59 million for Advanced Fuels

(e) Loan volume remains available for nuclear energy projects

(f) \$2 million NAS study on Fukushima; \$15 million for university programs



U.S. Department of Justice

Civil Division

TW:JED:MBSullivan

D.J. No. 154-0-356-0

Washington, D.C. 20530

December 20, 2011

BY ELECTRONIC AND UNITED STATES MAIL

Timothy A. Frazier
Designated Federal Officer
Blue Ribbon Commission on America's Nuclear Future
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington D.C. 20585

Dear Mr. Frazier:

Enclosed is the response of the U.S. Department of Justice to the request for information from the Blue Ribbon Commission on America's Nuclear Future, dated December 5, 2011.

Please contact Marian Sullivan in my office at (202) 307-0365, if we may provide any further assistance to the Commission.

Very Truly Yours,

Jeanne E. Davidson

JEANNE E. DAVIDSON

Director

Civil Division

M. Sullivan

Enclosure

**DEPARTMENT OF JUSTICE RESPONSE
TO REQUEST FOR INFORMATION FROM
THE BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE**

Request No. 1:

Please review the data presented in the following table from the BRC's draft report and indicate any corrections that are needed to update the information.

Response:

Table 1. Status of DOE-Utility Standard Contract Litigation (as of December 2011)

Standard contracts	76
Reactors covered by contracts	118
Cases filed through Dec. 15, 2011	78
Second round cases	12
Claims	\$6.4 billion
Voluntarily withdrawn	7
Settled	23
Separate settlement agreements	21
Reactors covered by settlements	65
Final unappealable judgments	13
Judgments on appeal	11
Pending before the trial court	24
DOJ trials through 2011	30
Litigation costs through FY2011 (Experts and support; no DOJ or DOE staff)	\$188 million
DOJ trials expected in 2012	Up to 6
Amount of judgments on appeal	\$509 million
Payments for final judgments and settlements to date	\$2 billion

As the update to this chart reflects, the Department has made a concerted effort and substantial progress in reaching settlements with utilities to break the seemingly endless

cycle of litigation. As a result of these efforts, we have or soon will have resolved the claims of approximately 70 percent of the industry through settlement.

The Department informed the Commission in February 2011 that, at that time, we had executed settlements resolving claims for costs incurred at 40 reactors. We also had conducted discussions with the utilities as a group to explore the possibility of reaching a standard settlement with a larger segment of the utilities whose claims were still pending before the courts. As a result of those discussions, we proposed to the utilities that we enter into settlements that satisfy their legitimate claims to date and provide for an administrative process to resolve their claims for costs incurred through December 31, 2013, by which time the Administration will have received the Commission's recommendations. Since February 2011, we have executed 13 additional settlements resolving claims covering 25 reactors and have authorization to enter another settlement covering four reactors. We continue to audit and evaluate the claims of other plaintiffs that have expressed interest in resolving their claims based upon the Government's settlement parameters.

Please note: We have not provided updates to the last two lines of the table (estimated total damages and estimated annual increase) because the Department of Energy ("DOE") is the source of that information and we understand that this request has been addressed by DOE in prior communications.

Request No. 2:

With respect to the number given for the final judgments (both unappealable and on appeal) and for the cases still pending before the trial court, how many reactors are represented by these numbers? (For example, of the 27 pending cases, how many reactors do they cover?)

Response:

Case Status	Number of Cases	Number of Reactors
Final unappealable judgments	13	35
Judgments on appeal	11	13
Pending before the trial court	24	37
Voluntarily withdrawn	7	5
Total	55	91

The total number of reactors captured in this chart added to the number of reactors covered by settlements exceeds the total number of reactors (118) for three reasons. First, some of the reactors counted in final unappealable judgments are covered by settlements that the parties reached subsequent to the entry of the final judgment. Second, both the sellers and the buyers of some nuclear plants have brought suits involving the same nuclear plant, so more than one case can address claims from the

same reactor. And, third, several utilities have filed second-round cases although the first round case is still pending and both cases concern the same reactors.

Request No. 3:

In what year would every reactor covered by a contract have a technical basis for a default claim against the federal government based on the acceptance schedule specified in August 2008 by the U.S. Court of Appeals for the Federal Circuit? (That is, according to the acceptance schedule and the OFF principle, in what year would every reactor covered by a contract have fuel eligible for pickup?) How many reactors would have such a basis if acceptance has not begun by 2020?

Response:

The Government cannot know when every reactor covered by a Standard Contract would have a "technical basis for a default claim," because the Government does not know when each utility will incur costs to provide additional storage at their sites as a result of DOE's breach. While DOE may have been obligated to accept a specified amount of fuel from a particular utility in accordance with the schedule decreed by the Court of Appeals for the Federal Circuit, only the utility will know when it is required to incur costs to provide storage for the fuel that DOE was obligated to accept. Similarly, the utilities would know which reactors will incur additional costs as a result of DOE's delay in performance until 2020.

To answer the second question -- in what year would every reactor covered by a contract have fuel eligible for pick up -- DOE reports that, in accordance with the schedule decreed by the Federal Circuit and the "oldest-fuel-first" principle, every reactor covered by a Standard Contract would have had at least one acceptance allocation by 2007.

... ..

...

... ..

...

... ..

... ..