

# State Nuclear Safety Inspector Office

## October 2010 Monthly Report to the Legislature

### Introduction

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

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

Commencing with the January 2010 report the glossary and the historical perspective addendum were no longer included in the report. Instead, this information was 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 October the general status of the ISFSI was normal. There were no instances of spurious alarms due to environmental conditions.

There was one fire-related impairment on October 27<sup>th</sup>. The impairment was due to a fire barrier penetration to the east wall of the central alarm station and was related to the fence relocating project described below. Additional measures were instituted and the impairment was resolved in less than a day.

There was one security-related impairment in October. The impairment was due to the relocation of the security fence near the east side of the Security and Operations Building. The project was reviewed by the Nuclear Regulatory Commission but it did not require their approval. The re-aligning of the fence was to minimize the number of spurious and environmental alarms the ISFSI was experiencing. The fence work continued into November.

There were 17 security events logged. Fourteen of the entries were due to transient environmental conditions. One event was related to the fence construction project and two involved safeguards information that prevents disclosure to the public.

There were 12 condition reports<sup>1</sup> (CR) for the month of October. The first CR was written on October 4<sup>th</sup> and involved the State's field thermoluminescent dosimeter<sup>2</sup> (TLD) at Station C. The TLD is used to monitor the radiation levels around the ISFSI. Apparently, as part of reducing visual impairments, the lower limbs of the

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

<sup>2</sup> Thermoluminescent Dosimeters (TLD) are very small, passive radiation monitors requiring laboratory analysis. Further information on TLDs is available from the glossary on the Radiation Program's website.

pine trees near Ferry Road were cut. One of the branches cut had a State TLD. The State Inspector reported his finding during his quarterly environmental field replacement of the TLDs and filed a CR with the on-site security personnel.

The remaining CRs involved the following issues.

- 2<sup>nd</sup> CR: Involved a minor hydraulic spill at the diesel fueling concrete pad. The spill was cleaned up and documented.
- 3<sup>rd</sup> CR: Addressed a missed water sample from the June radiological groundwater sampling campaign. When notified by the State Maine Yankee immediately took a sample.
- 4<sup>th</sup> CR: Dealt with safeguards information that can not be disclosed to the public.
- 5<sup>th</sup> CR: Documented the improper use of a procedure attachment that was under a previous revision. The current revision was used.
- 6<sup>th</sup> CR: Involved the digging effort associated with the fence project starting without a Soil Scientist present. The digging was halted until the Soil Scientist was present the next day.
- 7<sup>th</sup> CR: Documented the writing of a CR on an earlier revision of the form. The CR was rewritten on the current form.
- 8<sup>th</sup> CR: Resulted from some of the fence work not meeting project specifications. The sub par work was redone.
- 9<sup>th</sup> CR: Addressed an out of date form in one of the fence project work packages. There was no impact on the work and the form was used as is.
- 10<sup>th</sup> CR: Dealt with a contractor improperly storing a gas can. The can was immediately placed in proper storage.
- 11<sup>th</sup> CR: Involved a contractor leaving an energized extension cord at the end of the workday. The cord was immediately unplugged.
- 12<sup>th</sup> CR: Documented the degrading condition of some of the Uninterruptible Power Supply batteries. Although the batteries were degraded they were operable. New batteries were ordered and installed.

#### *Other ISFSI Related Activities*

On October 6<sup>th</sup> Maine Yankee provided their annual ISFSI Emergency Plan training to state officials at the Maine Emergency Management Agency facility in Augusta.

On October 12<sup>th</sup> the quarterly oversight group overseeing ISFSI activities met and discussed the members' annual reports to the legislature's Joint Standing Committee on Utilities and Energy. It was agreed that they would furnish a draft of their reports to the State's Radiological Control Program Manager by mid-December. Each member informed the group of their past activities. The State Nuclear Safety Inspector briefed the group as to his past quarterly activities as well as to his current and upcoming activities and commitments. The oversight group, which meets quarterly, was formed from the same legislation that created the State Nuclear Safety Inspector position and is composed of representatives from the Office of Public Advocate, the Department of Public Safety, the Department of Environmental Protection, the Department of Health and Human Services' Radiation Control Program, and Maine Yankee.

On October 26<sup>th</sup> the Nuclear Regulatory Commission (NRC) issued a letter on the pending acquisition of Maine Public Service (MPS), owner of a 5% interest in Maine Yankee, by BHE Holdings, Inc. MPS does not own a direct interest in the ISFSI. The NRC determined that the acquisition and merger did not constitute an indirect license transfer for the NRC review. Consequently, no pre-consent from the NRC was required.

On October 27<sup>th</sup> Maine Yankee held its annual Emergency Plan exercise. The scenario was of a two man armed assault, killing a security guard and using a rocket launcher to pierce the vertical concrete casks. One rocket was launched with visible damage to the external concrete but no damage to the transport and storage cask

housing the spent fuel inside the concrete shield. An Unusual Event was declared and appropriate state and local officials responded. There was no gaseous or particulate radiation released, but on-site radiation levels did increase due to the damaged cask. The two perpetrators were last seen heading towards the Back River. The Marine Patrol and Coast Guard were called in. A debriefing was held after the drill was terminated to discuss the overall response. Some suggestions for improvement were made.

## Environmental

On October 4<sup>th</sup> the State performed its quarterly field replacement of its radiation monitoring devices near the ISFSI. When the results are received from the vendor, the information will be provided in November's monthly report. It should be noted that the air sampling at Maine Yankee and media sampling of the Back River was discontinued in 2010 after about 40 years.

## Maine Yankee Decommissioning

The Confirmatory Summary Report detailing the State's involvement and independent findings from the decommissioning was started.

## Groundwater Monitoring Program

On October 12<sup>th</sup> the State's review of Maine Yankee's June groundwater data noted that one of the wells was not analyzed for the required gamma, tritium,<sup>3</sup> and hard-to-detect<sup>4</sup> and transuranic<sup>5</sup> analyses. In addition, the analyses for radioactive Iodine-129 did not meet the minimum detectable concentration specifications outlined in the post decommissioning radiological groundwater agreement between Maine Yankee and the State. Maine Yankee agreed to sample well number MW-306 and to perform the required analyses.

On October 27<sup>th</sup> Maine Yankee notified the State that it was assessing the quality control validation performed by an independent contractor on the June groundwater data and would provide the State with that information when it became available.

## Other Newsworthy Items

1. On October 4<sup>th</sup> the Nuclear Regulatory Commission released a memorandum from their Chief Financial Officer and Executive Director of Operations on the guidance office directors and regional administrators should heed under a FY 2011 continuing resolution. A copy of the memorandum is attached.
2. On October 6<sup>th</sup> the Assistant Attorney General of Washington sent a letter to the counsels representing the Department of Justice and the Nuclear Regulatory Commission (NRC) requesting information confirming the validity of the NRC staff's cessation of work on the Yucca Mountain Project based on a directive from the NRC Chairman. A copy of the letter is attached.

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<sup>3</sup> Tritium is a special name given to the radioactive form of Hydrogen normally found in nature. For more information, refer to the glossary on the Radiation Program's website.

<sup>4</sup> Hard-To-Detect refers to those radioactive elements that emit certain types of radiation, such as alpha or beta particles, which may require special chemical separation techniques and/or special instrumentation to detect their presence.

<sup>5</sup> Transuranic is a term used to describe those elements that are heavier than Uranium such as Neptunium, Plutonium, Americium, etc.

3. On October 7<sup>th</sup> Aiken County, South Carolina and the states of Washington and South Carolina filed a motion with the Nuclear Regulatory Commission (NRC) for a Commission order to restore the technical review of the Yucca Mountain license application. The motion was introduced when the Chairman of the Commission was perceived to unilaterally halt the NRC's staff review of the Yucca Mountain license application.
4. On October 8<sup>th</sup> Dr. Kenneth Rogers, a former Nuclear Regulatory Commissioner from 1987-1997, sent a letter to the Inspector General of the Nuclear Regulatory Commission requesting that the recent actions by NRC Chairman Jaczko to cease NRC activities associated with the Yucca Mountain review be investigated for any legal or other improprieties. Dr. Rogers also included in his letter to the Inspector General a letter he wrote to Chairman Jaczko expressing his concerns on the independence of the Commission and urging Dr. Jaczko to commit to the principle of independence adopted by the Commission in 1991. Copies of both letters are attached.
5. On October 8<sup>th</sup> Nuclear Regulatory Commissioner William Ostendorff issued a memorandum to his fellow Commissioners on his dissension with the staff budget guidance under FY 2011 continuing resolution. The memorandum delineates in detail his rationale for disagreeing with the guidance and why the Nuclear Regulatory Commission should continue with its Yucca Mountain review. A copy of his memorandum is attached.
6. On October 11<sup>th</sup> Representative Spratt from South Carolina, Chairman of the House's Committee on the Budget sent a letter to the Chairman of the Nuclear Regulatory Commission (NRC) expressing his deep concerns over the NRC's direction to cease its Yucca Mountain license application review. A copy of his letter is attached.
7. On October 12<sup>th</sup> the Reactor and Fuel Cycle Technology Subcommittee of the Blue Ribbon Commission met to discuss waste management implications of fuel cycle alternatives, advantages and disadvantages of new fuel cycles, and limiting future proliferation and security risks.
8. On October 12<sup>th</sup> the State of Nevada and the respondents, (the President, the Secretary of Energy, the Department of Energy, the Nuclear Regulatory Commission (NRC), the NRC Commissioners, the NRC Licensing Board Judges), filed a response with the U.S. Court of Appeals for the District of Columbia opposing the motion to lift the Court ordered stay and set an expedited schedule.
9. On October 12<sup>th</sup> the Nuclear Waste Strategy Coalition (NWSC) sent a letter to both co-chairs of the Blue Ribbon Commission's Reactor and Fuel Cycle Technology Subcommittee expressing concerns over the continued requirement for ratepayers to pay into the Nuclear Waste Fund when the Department of Energy dismantled the Yucca Mountain Project, the liability the federal government is accruing from its failure to remove the spent fuel, and how ratepayers are paying up to four times for the consequences of not building a permanent repository. A copy of their letter is attached. The NWSC is an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 47 stakeholders in 31 states, committed to reforming and adequately funding the U.S. civilian high-level nuclear waste transportation, storage, and disposal program.
10. On October 13<sup>th</sup> four members of the House of Representatives from the states of Wisconsin, Texas and Washington, sent a letter to Nuclear Regulatory Commission Chairman Jaczko expressing their concerns over the Chairman's decision to terminate the staff's review of the Yucca Mountain license application. The Representatives detailed a number of reasons why the Chairman's directive was alarming and requested a response to six questions that ranged from the Chairman's legal authority for his decision to specific communications with the White House. A copy of their letter is attached.

11. On October 13<sup>th</sup> the Nuclear Waste Strategy Coalition (NWSC) held a conference call to brief its members on the status of the FY 2011 appropriations continuing resolution and other congressional activities, an update of the Nuclear Regulatory Commission's (NRC) review of the Department of Energy's (DOE) Yucca Mountain license application, the current status of the U.S. Court of Appeals for the District Of Columbia Circuit's stay of lawsuits pending the NRC's decision on their Atomic Safety and Licensing Board's ruling to deny the DOE's motion to withdraw its license application, the State of Washington's Attorney General's letter on Chairman's Jaczko's decision to halt the NRC staff's work on Yucca Mountain, and an update of the Blue Ribbon Commission's Committee and Subcommittee hearings.
12. On October 13<sup>th</sup> the Senior Counsel for the Nuclear Regulatory Commission (NRC) responded to Washington State's Assistant Attorney General's letter dated October 6<sup>th</sup>. The Senior Counsel points to the NRC's Chief Financial Officer's October 4<sup>th</sup> memorandum and the Commission's proposed FY 2011 budget under NUREG -1100, Volume 26 as a basis for discontinuing the Yucca Mountain review. A copy of the NRC response is attached.
13. On October 14<sup>th</sup> the Sustainable Fuel Cycle Task Force sent a letter to the Nuclear Regulatory Commission (NRC) Chairman Jaczko and the four other Commissioners requesting the reversal of the Chairman's directive to halt work on the Department of Energy's Yucca Mountain license application. A copy of their letter is attached.
14. On October 14<sup>th</sup> Nuclear Regulatory Commissioner Kristine Svinicki affirmed Commissioner Ostendorff's proposal on Commission direction on the staff budget guidance under FY 2011 continuing resolution. A copy of her remarks detailing her reasons for agreeing with Commissioner Ostendorff is attached.
15. On October 14<sup>th</sup> the Secretary of the Nuclear Regulatory Commission (NRC) issued a memorandum to Commissioner William Ostendorff notifying him that a majority of the Commissioners declined to participate in the matter of the Commission direction on staff budget guidance under the FY 2011 continuing resolution. Therefore, his proposal was not approved.
16. On October 15<sup>th</sup> the petitioners Aiken County, South Carolina, the states of Washington and South Carolina, the Tri-City Leaders from Hanford, Washington, and the National Association of Regulatory Utility Commissioners filed a response with the U.S. Court of Appeals for the District of Columbia Circuit on the Department of Energy's opposition to a motion filed earlier by the petitioners to lift the Court's stay and set an expedited schedule. The petitioners' motion was prompted based on the Nuclear Regulatory Commission Chairman's unilateral decision to halt the NRC staff review of the Department of Energy's (DOE) Yucca Mountain license application and the continued inaction of the Commission with respect to their Atomic Safety and Licensing Board's ruling denying the DOE's motion to withdraw its license.
17. On October 16<sup>th</sup> the U.S. Nuclear Waste Technical Review Board (NWTRB) sent a letter to the Assistant Secretary for Nuclear Energy for the Department of Energy as a follow-up to the NWTRB's public meeting in June 2010 recommending that studies should be undertaken to prevent future problems with extended dry cask storage. The letter also advocated for a strong program in scientific research and technology development in waste management. The NWTRB was created as part of the 1987 amendments to the Nuclear Waste Policy Act (NWPA) and was charged with reviewing the Department of Energy's technical activities under the NWPA. A copy of their letter is attached.

18. On October 18<sup>th</sup> the National Association of Regulatory Utility Commissioners (NARUC) along with 18 commercial utilities filed a final initial brief with the U.S. Court of Appeals for the District of Columbia Circuit on the Department of Energy's failure to perform an annual Nuclear Waste Fund (NWF) fee assessment and the adequacy of that fee in light of a \$24 billion balance in the NWF and the dismantling and defunding of the Yucca Mountain Project.
19. On October 18<sup>th</sup> the Nuclear Regulatory Commission (NRC) staff responded to a motion filed with the Commission for an order to restore the technical review of the Yucca Mountain license application. The staff asserted that the motion should be denied as there is no basis to grant the relief requested. Likewise, the State of Nevada also filed with the Commission on the same day their contention that the motion should be denied since it did not include the proper certification as mandated by the NRC's regulations. The Native Action Community Council concurred and joined Nevada in their opposition to the motion.
20. On October 19<sup>th</sup> the State of Nevada filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its third witness update on the Yucca Mountain application. Nevada indicated there were no additional witnesses.
21. On October 19<sup>th</sup> the State of Nevada filed a corrected answer with the Nuclear Regulatory Commission on their contention that a motion to restore the technical review of the Yucca Mountain license application be denied.
22. On October 19<sup>th</sup> two members of the House of Representatives from Michigan and Kentucky sent a letter to the Inspector General of the Nuclear Regulatory Commission requesting a "formal investigation into the Chairman's recent actions to shut down the (Yucca Mountain) project". A copy of their letter outlining their request is attached.
23. On October 20<sup>th</sup> seven members of the House of Representatives, representing Georgia, Tennessee, New Jersey, Idaho, California, Louisiana, and Montana, sent a letter to the Chairman of the Nuclear Regulatory Commission protesting the "premature and partisan closure of the Nuclear Regulatory Commission's (NRC's) consideration of the Yucca Mountain license application." The representatives went on to say that the NRC's FY2011 "budget request is irrelevant under the CR" (continuing resolution). A copy of their letter is attached.
24. On October 21<sup>st</sup> the U.S. Nuclear Waste Technical Review Board (NWTRB) sent a letter to the Assistant Secretary for Environmental Management for the Department of Energy as a follow-up to the NWTRB's public meeting in June 2010 recommending that the:
  - a) as-built lifetimes for all dry storage of spent nuclear fuel stored in Idaho be assessed in light of the uncertainty of the availability of a geologic repository,
  - b) 500 year design lifetime of the bins containing calcined liquid high level waste be re-examined, and
  - c) characteristics of the final waste form for the steam treatment of sodium-bearing waste, which may become high-level waste, was of interest.A copy of their letter is attached.
25. On October 21<sup>st</sup> -22<sup>nd</sup> the Blue Ribbon Commission held a two day meeting in Helsinki, Finland to discuss the Finnish approach to regulatory issues, site selection, public opinion, finance and economics, and non-government organizations' perspectives, such as Greenpeace and the Finnish Association for Nature Conservation.

26. On October 23<sup>rd</sup> and October 25<sup>th</sup>-26<sup>th</sup> the Blue Ribbon Commission held meetings in various locations in Sweden. The discussions centered on the local government's perspective, the repository project, concerned citizenry and the role of non-government organizations (NGO), such as the Swedish NGO Office for Nuclear Waste Review. The visit also included a site tour of the Apso Hard Rock Laboratory in Oskarshamn. The Apso Laboratory is an underground laboratory for research, development and demonstration in a realistic and undisturbed rock environment down to the same depth planned for their future deep repository.
27. On October 25<sup>th</sup> Aiken County South Carolina, the states of Washington and South Carolina, and the Tri-City Leaders from Hanford, Washington, filed with the U.S. Court of Appeals for the District of Columbia Circuit a supplemental filing regarding the motion to lift the Court's stay on the Yucca Mountain license application and set an expedited schedule. The supplemental information provided new evidence that a decision to terminate the Nuclear Regulatory Commission's staff review of the Yucca Mountain license application was made without the Commission's deliberation.
28. On October 26<sup>th</sup> the Nuclear Regulatory Commission (NRC) staff filed with the NRC's Atomic Safety and Licensing Board indicating that they had no additional witnesses related to Phase I of the National Environmental Policy Act on the Yucca Mountain license application.
29. On October 26<sup>th</sup> the Nuclear Waste Technical Review Board (NWTRB) held a fall meeting to discuss the technical experience gained during the development of the Yucca Mountain Repository Program. Three panels were created with each providing separate perspectives from within the Yucca Project, from state and local governments and from other countries. A copy of their agenda is attached.
30. On October 27<sup>th</sup> Nuclear Regulatory Commissioner William Ostendorff responded to Representative Doc Hastings' October 21<sup>st</sup> letter inquiring about the Nuclear Regulatory Commission's (NRC) decision to halt the work on Yucca Mountain and the status of Volume III of the Yucca Mountain's Safety Evaluation Report (SER). The Commissioner reiterated his position that he disagreed with Chairman Jaczko's decision to close out the NRC's High-Level Waste Repository Program. As for the status of Volume III of the SER, the Commissioner noted that the SER was sent to the Director of Nuclear Material Safety and Safeguards for "concurrence and authorization to publish" as early as July 15, 2010. A copy of the letter is attached.
31. On October 27<sup>th</sup> Nuclear Regulatory Commission Chairmen Jaczko responded to Representative Sensenbrenner's October 13<sup>th</sup> letter stating that his actions are "consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past NRC practice". Chairman Jaczko addresses each of the six questions posed in the Representative's October 13<sup>th</sup> letter that was co-signed by three other representatives. Copies of the letter and response to the questions are attached.
32. On October 27<sup>th</sup> Aiken County South Carolina, the states of Washington and South Carolina, and the Tri-City Leaders from Hanford, Washington filed with the U.S. Court of Appeals for the District of Columbia Circuit a status report as required by Court Order on July 28<sup>th</sup> on the initial filing of the motion to lift the stay. On the same day the Department of Justice and the Nuclear Regulatory Commission also filed with the U.S. Court of Appeals their status report.
33. On October 27<sup>th</sup> the Nuclear Waste Strategy Coalition (NWSC) held a conference call to brief its members on the status of the Nuclear Waste Fund fee litigation, FY 2011 appropriations continuing resolution, an update to the U.S. Court of Appeals for the District Of Columbia Circuit's Aiken County's (South Carolina) petition to expedite the briefing schedule on the Department of Energy's

motion to withdraw its license application on Yucca Mountain, and an update on the congressional activities in response to Chairman Jaczko's decision to terminate the NRC's work on Yucca Mountain, and a status brief of the Blue Ribbon Commission's Committee and Subcommittee meetings.

34. On October 27<sup>th</sup> Aiken County South Carolina, the states of Washington and South Carolina, and the Tri-City Leaders from Hanford, Washington filed with the U.S. Court of Appeals for the District of Columbia Circuit a status report as required by the Court order earlier this year on the initial filing of the motion to lift the stay.
35. On October 27<sup>th</sup> the Department of Justice and the Nuclear Regulatory Commission filed a response with the U.S. Court of Appeals for the District of Columbia Circuit opposing the October 25<sup>th</sup> filing of the petitioners' supplemental filing motion to lift the stay and set an expedited schedule.
36. On October 28<sup>th</sup> the State of Nevada filed their response with the U.S. Court of Appeals for the District of Columbia Circuit on the October 25<sup>th</sup> filing of the petitioners' supplemental filing motion to lift the stay contending that the supplemental filing is unauthorized, misdirected and misleading
37. .On October 28<sup>th</sup> Clark County, Nevada filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board its third certification of no additional witnesses in the Yucca Mountain license application. Likewise, on the same day, the Department of Energy and Inyo County, California, also filed their certifications indicating no additional witnesses.
38. On October 29<sup>th</sup> the Joint Timbisha Shoshone Tribal Group filed with the Nuclear Regulatory Commission's Atomic Safety and Licensing Board their certifications of no party witnesses and no additional other witnesses on the Yucca Mountain license application before the Board.
39. On October 29<sup>th</sup> former Chairman of the Nuclear Regulatory Commission (NRC), Dr Dale Klein, took exception to NRC Chairman Jaczko's assertion that the decision to terminate the NRC staff's work on the Yucca Mountain license application was consistent with the Commission's FY 2011 budget proposal. Dr. Klein stated that he was intimately involved in the deliberations of the FY 2011 budget in the summer and fall of 2009 as the Chairman of the NRC. The FY 2011 budget that he was instrumental in developing did not include provisions for the discontinuation of the staff's work on Yucca Mountain. He further asserts, since three current Commissioners did not vote on the budget guidance he helped develop then his budget remains in force, which opposed Chairman Jaczko's position. A copy of the Nuclear Townhall article which included Dr. Klein's letter is attached.

### *Other Related Topics*

1. Attached is a balance sheet on the Nuclear Waste Fund (NWF) as of the end of September 2010. The Table lists the status for each state that has or had nuclear generating facilities and their respective payments into the NWF. Please note that under the debt column, the ratepayers of Maine still owe the federal government \$116.9 million dollars for nuclear fuel that was burned prior to 1983.



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

October 4, 2010

MEMORANDUM TO: Office Directors and Regional Administrators

FROM: J. E. Dyer *J. E. Dyer*  
Chief Financial Officer

R. W. Borchardt *R. W. Borchardt*  
Executive Director for Operations

SUBJECT: GUIDANCE UNDER A FISCAL YEAR 2011 CONTINUING  
RESOLUTION

On September 30, 2010, a Continuing Resolution (CR) through December 3, 2010, was signed into law. The purpose of this memorandum is to review and augment the earlier guidance on budget execution. The amount of funding available under a CR is determined by the annual CR legislation enacted by Congress. Funding availability is based on the previous fiscal year appropriated level augmented by unobligated carryover, as in past years. The NRC's FY 2011 budget request sustains agency's programs at approximately the same level as FY 2010, with the exception of the High-Level Waste Program. Therefore, offices should proceed to commit, obligate, and expend funds for ongoing activities to effectively use available resources during the CR.

Although the staff made improvements, we continue to emphasize the importance of effectively executing the agency budget by incrementally funding activities, as well as, preparing and moving procurement packages through the acquisition process with "subject to availability of funds" language, when appropriate, to expedite the award process when sufficient funds become available. Additionally, to maintain maximum flexibility, priority for funds for existing contract support activities should be allocated only to those activities that do not have sufficient forward funding.

As highlighted in the earlier guidance provided by the Office of the Chief Financial Officer (OCFO), CR funding will be provided based on the offices' needs as identified in their Funds Utilization Plans (FUP) submitted on August 6, 2010. Based on the office's FUPs, agency funding needs exceeded the funds available in the first quarter. As a result, we plan to provide offices with 60 percent of the requested funding for the period of the CR. Offices should advise OCFO of any significant mission critical needs as a result of the constrained funding.

During the CR period, new work that was not authorized and funded in FY 2010 should not be started in FY 2011. Offices should contact the OCFO prior to funding any questionable

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activities under the CR. In addition, contract awards for FY 2011 should be reflected in your Advance Procurement Plan (APP). It is important that offices processing contract documents consistent with their APPs/FUPs continue to focus on improved budget execution during the CR.

With respect to the High-Level Waste Program, the CR legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget using available Nuclear Waste Fund resources during the CR.

As we move forward, the OCFO will refine the CR plan and issue allowances for every CR period thereafter, until such time the agency receives its full appropriation/apportionment. After the agency receives its full-year appropriation/apportionment, this guidance will be rescinded and all normal budget execution operations will be resumed.

cc: PMDA/DRMA Directors



Rob McKenna

## ATTORNEY GENERAL OF WASHINGTON

Ecology Division

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October 6, 2010

### SENT VIA EMAIL

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Dear Ms. Durkee and Mr. Cordes:

I am writing on behalf of Washington, South Carolina, Aiken County, and the Ferguson petitioners in the consolidated matter *In re: Aiken County*, No. 10-1050 (DC Cir.).

We have become aware of information suggesting that the staff of the Nuclear Regulatory Commission (NRC), apparently at the direction of Chairman Jaczko, has ceased (or is in the process of ceasing) work it has been conducting in relation to the Department of Energy's (DOE's) application to license a proposed repository for high-level radioactive waste and spent nuclear fuel at Yucca Mountain, Nevada. This includes, but may not be limited to, the NRC staff's review of DOE's license application materials and the NRC staff's preparation of Safety Evaluation Reports.

We are writing to ask that you confirm whether or not this information is accurate. We are directing our inquiry to you, rather than the NRC directly, based on the fact that our question relates to a matter in litigation in which you represent the NRC, among other respondents. In responding, we request that you honor the spirit of our question, rather than splitting any technical hairs in how our question is framed. In our opinion, this information is relevant to our mutual obligation to continue to inform the D.C. Circuit Court of Appeals of the status of the administrative matter before the NRC.

ATTORNEY GENERAL OF WASHINGTON

Ellen J. Durkee  
John F. Cordes  
October 6, 2010  
Page 2

We ask that you please respond on or before Monday, October 11, 2010. Thank you in advance for your cooperation.

Sincerely,



ANDREW A. FITZ  
Senior Counsel  
(360) 586-6752

AAG:dmm

cc: All parties of record in the consolidated matter  
*In re: Aiken County, No. 10-1050 (DC Cir.)*

\\YUCCA MOUNTAIN\CORRESPONDENCE\URKEE\NRC\LETTER

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Oct. 8, 2010

Mr. Hubert Bell, Inspector General  
U.S Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Mr. Bell:

I have enclosed a copy of a letter that I have sent to Chairman Jaczko and all other Commissioners expressing my concerns.

I respectfully request that your office initiate a review of Chairman Jaczko's recent unilateral actions to terminate the NRC Staff's review of the DOE Yucca Mountain application in order to determine whether any legal or other improprieties have been committed.

Sincerely yours,

Kenneth C. Rogers  
Commissioner, U.S. Nuclear Regulatory Commission 1987-1997

cc: Chairman Jaczko

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Oct. 8, 2010

The Honorable Gregory B. Jaczko, Chairman  
U.S Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Chairman Jaczko:

A number of bits and pieces of news concerning NRC have come to my attention that have given me sufficient serious concern to decide to communicate my views directly to you.

For a number of decades the U.S. Nuclear Regulatory Commission has led the world in the safety regulation of the civilian use of nuclear materials and systems. NRC is held in high esteem worldwide for its demonstrated technical capability and unbiased independence.

In January of 1991, the Commission promulgated a set of Principles of Good Regulation that I believe have provided guidance to Commissioners and staff to this time. They have been publicly cited as model guidance by Commissioners as well as to Commissioners.

The very first of those five Principles is: *INDEPENDENT. Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated.*

The wisdom of a Commission composed of five independent Commissioners; each with his/her own staff to provide support for his/her votes (each of equal weight) on all matters of relevant policy, has been demonstrated time after time. The Nuclear Regulatory Commission is an Independent Agency. It is not a

Department headed by a Single Administrator who makes decisions single handedly. Occasionally an NRC Chairman has chafed under the necessity of persuading his/her fellow Commissioners to agree and to vote with the Chairman on issues on which unanimity could not be easily achieved. However, such a check on a Chairman's strong - but possibly flawed - views has sometimes avoided decisions that in hindsight would have been clearly and seriously unwise. In my ten years of service as an NRC Commissioner, I had ample opportunity to witness the value of the Commission structure and of the Commissioners' independence.

I am deeply concerned that the independence of the Commission and thereby its integrity are under external attack, and moreover that internally the judgments of each of the Commissioners on an important policy matter are being circumvented.

Through the determined insistence by each Commissioner of adherence to the letter and spirit of the Principle of Independence these threats can be overcome, and the integrity and respect for the U.S. Nuclear Regulatory Commission saved from what could be a blunder of historic proportions.

I urge you to commit yourself to that objective.

Sincerely yours,

Kenneth C. Rogers

Commissioner US Nuclear Regulatory Commission 1987 - 1997



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

October 8, 2010

OFFICE OF THE  
COMMISSIONER

MEMORANDUM TO: Chairman Jaczko  
Commissioner Svinicki  
Commissioner Apostolakis  
Commissioner Magwood

FROM: Commissioner Ostendorff *WC Ostendorff*

SUBJECT: DISAGREEMENT WITH STAFF BUDGET GUIDANCE UNDER  
FISCAL YEAR 2011 CONTINUING RESOLUTION

The purpose of this memorandum is to record my disagreement with guidance given to the NRC Staff related to the fiscal year 2011 Continuing Resolution (CR). The contents of this memorandum are consistent with a memorandum to file I signed on October 6, 2010.

On October 4, 2010, the EDO and CFO issued a memorandum to the Staff providing direction on the fiscal year 2011 Continuing Resolution. This memorandum stated that "[w]ith respect to the High-Level Waste Program, the CR legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the fiscal year 2011 budget request using available Nuclear Waste Fund resources during the CR." On October 6, 2010, I issued COMWCO-10-0002 for the Commission's consideration to provide specific direction to the staff with respect to this guidance, but I wanted to write separately to express my strong personal disagreement with the direction given to the Staff by this guidance.

I believe it is inconsistent with the intent of the Continuing Resolution to direct the Staff to follow direction in the budget request for fiscal year 2011. My conclusion comes not only from a plain reading of the Continuing Resolution and applicable guidance, but also from my past experience as Principal Deputy Administrator at NNSA and as counsel for the House Armed Services Committee. With respect to the fiscal year 2011 Continuing Resolution, Section 101 expressly provides that the funds to be appropriated are those "as provided in the applicable appropriations Act for fiscal year 2010 and under the authority and conditions provided in such Acts, for continuing projects or activities ... that are not otherwise specifically provided for in this Act..." (emphasis added). Absent any express exception in the Continuing Resolution, the NRC is obligated to follow its fiscal year 2010 budget ... including any Commission direction contained in that budget. The Continuing Resolution does not specifically provide for the NRC to follow its yet-to-be-approved fiscal year 2011 budget request, nor does it even specifically mention the NRC or the High-Level Waste repository review. Thus, under the express language of the Continuing Resolution, special treatment for this activity is "not otherwise specifically provided for." A basic canon of statutory construction is *expressio unius est exclusio alterius*: the express mention of one thing excludes all others. Congress expressly outlined all of the exceptions to the general rule in Section 101 that agencies should follow their fiscal year 2010 budgets, and the NRC's High-Level Waste Program is not one of those exceptions, therefore

making the fiscal year 2010 budget direction operable.

Further, Section 104 of the Continuing Resolution states that "except as otherwise provided in Section 102, no appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during fiscal year 2010." This prohibition reinforces the view that the NRC is to stay the course with respect to how it was undertaking projects or activities during the Continuing Resolution. The Commission's fiscal year 2010 budget specifies that fiscal year 2010 funds will be used to "support the ongoing license review by funding the NRC staff conducting technical license application review activities...." I strongly object to using funds during the Continuing Resolution for a reason inconsistent with this stated purpose, such as "orderly closure" of the licensing review. Commencing orderly closure is not, in my opinion, "conducting technical license application review activities," and therefore is entirely inconsistent with the intent of the Continuing Resolution.

In addition to a plain reading of the Continuing Resolution, this view is also supported by guidance from the Office of Management and Budget (OMB). Section 123 of OMB Circular A-11, for example, states that normally, "the continuing resolution limit[s] the purposes for which funds may be obligated." Circular A-11 goes on to explain that "[a] CR makes amounts available subject to the same terms and conditions specified in the enacted appropriations acts from the prior fiscal year.... Normally, you are not permitted to start new projects or activities." (emphasis in original). Therefore, it is my opinion that under the Continuing Resolution the staff should continue to follow the Commission's direction in the fiscal year 2010 budget as authorized and appropriated by Congress, rather than change course as suggested in the Continuing Resolution guidance memorandum.

The relevance of the fiscal year 2011 budget request is limited to determining the rate at which the programs and activities are to be funded during the Continuing Resolution, not to determine that the programs and activities should be conducted in accordance with direction that is contained in the fiscal year 2011 budget request. To the extent that budget direction in the fiscal year 2011 budget request should be followed (a position I do not agree with), the conditions in that budget request that would authorize "orderly closure" have not been met. The fiscal year 2011 budget request clearly states that such closure would not begin until "withdrawal or suspension of the licensing review...." Since the issue of whether the application may be withdrawn is currently before the Commission and a final decision has not been rendered, that condition clearly has not been met.

cc: EDO  
CFO  
OGC  
SECY  
OCAA

JOHN M. SPRATT, JR., SOUTH CAROLINA  
CHAIRMAN

THOMAS S. KAHN, STAFF DIRECTOR  
AND CHIEF COUNSEL  
(202) 226-7200



PAUL RYAN, WISCONSIN, RANKING MEMBER

AUSTIN SMYTHE, REPUBLICAN STAFF DIRECTOR  
(202) 226-7270

**U.S. House of Representatives**  
COMMITTEE ON THE BUDGET  
Washington, DC 20515

October 11, 2010

The Honorable Gregory B. Jaczko  
Chairman  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16G4  
Washington, DC 20555-0001

Dear Chairman Jaczko:

I am writing to express my deep concerns with reports that the Nuclear Regulatory Commission (NRC) staff has been instructed to cease the review of the Department of Energy's (DOE) application for a license to operate a nuclear waste repository at Yucca Mountain, Nevada. As you know, there are several pending lawsuits on this matter, and the commission has not ruled on the Atomic Safety and Licensing Board's determination that DOE cannot legally withdraw the application. I urge you to ensure that NRC's review of the application be continued.

On July 27, 2010, I called a hearing before the Budget Committee to hear testimony from the Congressional Budget Office and the Departments of Energy and Justice on the budget implications of ending this project. I came away from that hearing more convinced than ever that terminating Yucca Mountain would be a costly mistake that would maintain the storage of high-level nuclear waste indefinitely at more than one hundred sites across the nation, including those in South Carolina.

Nearly 3,800 metric tons of uranium is stored at four nuclear plants that are home to seven reactors in South Carolina alone. Since 1998, the U.S. government has been legally obligated to remove waste from these sites and about one hundred others nationwide. The Federal government also is legally required to remove defense nuclear waste from the nuclear weapons complex, including the Savannah River site. However, the government has not met its obligation yet, even though Congress decided that Yucca Mountain is the appropriate site for this waste. In response, the State of South Carolina and Aiken County, South Carolina, have filed lawsuits on this matter that remain pending in court.

I remain strongly opposed to the Administration's actions to terminate the Yucca Mountain project and urge the NRC to move forward in fulfilling its duty to review the license application.

Sincerely,

A handwritten signature in black ink that reads "John M. Spratt, Jr." in a cursive style.

John M. Spratt, Jr.  
Chairman

**Executive Committee Officers:**

David Wright, Chairman  
Vice Chairman, SC Public Service Commission

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

David Boyd, Membership  
Chairman, MN Public Utilities Commission

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

Greg White, Communications  
Commissioner, MI Public Service Commission



October 12, 2010

Letter sent via email.

The Honorable Pete Domenici  
Co-Chairman  
Blue Ribbon Commission  
Reactor and Fuel Cycle Technology Subcommittee  
Department of Energy  
Washington, D.C. 20585-1000

Mr. Per Peterson  
Co-Chairman  
Blue Ribbon Commission  
Reactor and Fuel Cycle Technology Subcommittee c/o  
c/o Department of Energy  
Washington, D.C. 20585-1000

**Re: October 12 Meeting.**

Dear Senator Domenici and Mr. Peterson:

The members of the Nuclear Waste Strategy Coalition (NWSC) are encouraged that the Blue Ribbon Commission Reactor and Fuel Cycle Technology Subcommittee, continues to hear from nuclear industry representatives, scientists and distinguished experts sharing their perspective and knowledge with regards to the future of reactor and fuel cycle technology, proliferation and security risks.

The NWSC is an ad hoc group of state utility regulators, state attorneys general, electric nuclear utilities and associate members representing 49 organizations in 32 states. The NWSC was formed in 1993 out of frustration at the lack of progress the Department of Energy (DOE) had made in developing a permanent repository for spent nuclear fuel (SNF) and high-level radioactive waste (HLRW), as well as Congress's failure to sufficiently fund the nuclear waste disposal program (Program) on an annual basis.

This Subcommittee's commitment is admirable in that it is trying to find solutions to reduce the 62,000 tons of SNF currently stranded at 121 sites in 39 states.

Advancing the recycling program in the U.S. would alleviate the problem of SNF and HLRW stranded at decommissioned, operating commercial plants, as well as DOE facilities. However, the recycling of spent fuel and interim storage facilities are not a substitute for a permanent repository.

As the Subcommittee is aware, SNF is not waste and most of which is recyclable. The U.S. invented the recycling technology from which other countries are now benefiting. We are still pondering whether we should recycle, when we should recycle, and the type of recycling technology that would be economic, be safe, protect the environment, and address security and non-proliferation concerns.

Since 1994, the NWSC has been advocating the removal of this Program from DOE and the protection of the ratepayers' fees paid into the Nuclear Waste Fund (NWF) through their electric bills. A recent study by the Massachusetts Institute of Technology also recommended the removal of this Program from DOE and the establishment of an independent quasi-government corporation, thus freeing it from politics and the annual appropriations cycle.

Until Congress amends the 1982 Nuclear Waste Policy Act, as amended, the NWSC continues to advocate that an effective Program should consist of a permanent repository at the Yucca Mountain site; an integrated transportation plan; and centralized interim facilities that advance and complement the permanent repository while addressing near-term needs. However, centralized interim storage is not a substitute for a permanent repository and should be considered as a short-term solution only. We further advocate consensus among the Federal government, state and local officials, stakeholders and local communities, as well as sustainable support for the siting and operation of such an interim storage and recycling facilities.

The Subcommittee should also take into its deliberations that:

- (a) The nation's ratepayers are paying more than \$770 million annually into the NWF. Ratepayers from 41 states have already paid more than \$34 billion, including interest, into the NWF for the removal of SNF and HLRW during this generation.
- (b) The Courts have already ruled that the Federal government is liable for the added storage costs resulting from the DOE's failure to remove SNF and HLRW by dates agreed to in the original contracts with nuclear electric utilities. The DOE already faces more than \$2 billion in court judgments and legal expenses resulting from the 1998 failure to meet its contractual and statutory obligations to remove SNF and HLRW from plant sites. The Department of Justice officials further estimate that current liabilities for 72 cases could reach \$13 billion, growing further by \$500 million for each additional year of delay. These liabilities are paid from the Judgment Fund.
- c) The consequences of the Federal government's failure to construct a permanent repository is that ratepayers are paying up to four times for ongoing spent fuel storage and future disposal – and that does not include decommissioning funds:
  - (i) While the DOE is trying to withdraw with prejudice its license application from the Nuclear Regulatory Commission, the ratepayers continue to pay into the NWF for storage at the deep geologic repository.
  - (ii) Due to the 1998 delay, ratepayers have to pay through rates to expand and re-rack their existing cooling pools in order to accommodate more spent fuel.
  - (iii) The ratepayers are continuing to pay through rates to keep the spent fuel stored at the existing plant sites in dry cask storage.
  - (iv) All taxpayers – not just ratepayers – are paying through taxes for judgments and settlements through the Judgment Fund.

We should not continue to pass this problem on to future generations – action can and should be taken in the near term to address the nation's SNF and HLRW problem.

The members of the NWSC thank you for the opportunity to submit our input. We look forward to the opportunity to continue working with and providing further input to the Blue Ribbon Commission Reactor and Fuel Cycle Technology Subcommittee.

Respectfully yours,



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

C: Mr. Timothy A. Frazier, Blue Ribbon Commission, Department of Energy, Nuclear Energy.

**Congress of the United States**  
**Washington, DC 20515**

October 13, 2010

**Chairman Gregory Jaczko**  
**Nuclear Regulatory Commission**  
**11555 Rockville Pike**  
**Rockville, MD 20852**

**Dear Chairman Jaczko:**

We are writing to express our concern regarding reports that you are unilaterally halting the Nuclear Regulatory Commission's (NRC) review of the Department of Energy's (DOE) license application for the nuclear waste repository at Yucca Mountain.

Recent media reports assert that you directed NRC staff to begin terminating review of DOE's license application, consistent with the language of the Fiscal Year 2011 (FY11) budget request, despite the fact that Congress has yet to approve the FY11 budget.<sup>1</sup> This action has been justified in a guidance memo which argues, "the [continuing resolution] legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget..."<sup>2</sup> However, basing funding and operational decisions on submitted budget requests, not appropriations bills signed into law, is suspect. Even the NRC spokesman, David McIntyre, noted that he was "not sure whether there was a precedent for [your] decision."<sup>3</sup>

Your directive is even more alarming given the current status of the license application. As you know, the Atomic Safety and Licensing Board (ASLB) rejected DOE's motion to withdraw the license application on June 29, 2010. According to the ASLB, DOE lacks the authority to overrule clear Congressional intent for NRC to review the license application of Yucca Mountain as a nuclear waste repository. As you know, Congress passed the Nuclear Waste Policy Act of 1982 (NWPA) to centralize the long-term management of nuclear waste, including construction of a safe and permanent nuclear waste repository. In 1987, Congress amended the NWPA by designating Yucca Mountain as the only option for a longer-term storage site by a vote of 237-181 in the House of Representatives and 61-28 in the Senate. Congress reaffirmed Yucca Mountain's designation as the only option for a long-term storage site in 2002 by a vote of 306-117 in the House of Representatives and 60-39 in the Senate. Again in 2007, the House of Representatives overwhelmingly rejected, by a vote of 80-351, an attempt to eliminate funding for the Yucca Mountain nuclear waste disposal program. Additionally, on July 6, 2010, 91 Members of Congress sent DOE a letter expressing concern with their decision to immediately close Yucca Mountain.

The commissioners have not yet issued a ruling on appeal; therefore, unless the commission overturns the ASLB decision, the NRC must consider the license application. Your unilateral

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<sup>1</sup> <http://www.lvrj.com/news/nrc-chairman-directs-stoppage-of-yucca-review-104458878.html>

<sup>2</sup> U.S. Nuclear Regulatory Commission, "Guidance Under a Fiscal Year 2011 Continuing Resolution." October 4, 2010.

<sup>3</sup> <http://www.eenews.net/Greenwire/2010/10/07/4/>

Chairman Jaczko  
October 13, 2010  
Page Two

decision silences the opinions of the other commissioners on the pending appeal. Further, legal challenges in federal court are imminent, pending final action from the NRC. Your directive gives the appearance of coordinated action between you and DOE, which suggests an additional level of impropriety.

In light of the reports, we request answers to the following questions:

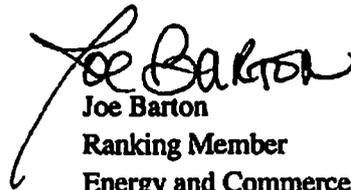
1. On what legal authority are you grounding your decision to terminate review of the license application based on a budget request, rather than existing law?
2. What specific actions have been taken or will be taken to terminate review of the license application, including all actions related to NRC staff review of the application?
3. How does halting NRC review of the license application influence the pending appeal of ASLB's ruling?
4. How will your decision impact future legal challenges to DOE's motion to withdraw?
5. How are you ensuring that NRC is prepared to resume consideration of the license application if the commission and courts uphold ASLB's decision?
6. What communication specifically relating to this decision have you had with the offices of Secretary of Energy Chu, Senate Majority Leader Reid, or the White House?

Please respond by October 27, 2010. We appreciate your cooperation.

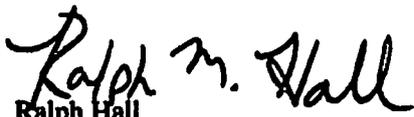
Sincerely,



Jim Sensenbrenner  
Ranking Member  
Select Committee on Energy Independence and  
Global Warming



Joe Barton  
Ranking Member  
Energy and Commerce Committee



Ralph Hall  
Ranking Member  
Science and Technology Committee



Doc Hastings  
Ranking Member  
Natural Resources Committee



OFFICE OF THE  
GENERAL COUNSEL

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

October 13, 2010

Andrew A. Fitz  
Senior Counsel  
Office of the Attorney General of Washington  
2425 Bristol Court, SW, 2d Floor  
Olympia, WA 98504-0017

Dear Mr. Fitz

Your letter of October 6, 2010, asked whether the Nuclear Regulatory Commission (NRC) staff, "apparently at the direction of Chairman Jazcko, has ceased (or is in the process of ceasing) work" on the Department of Energy's (DOE's) application for NRC approval of a high-level waste facility at Yucca Mountain, Nevada. Pointing to "media accounts," your follow-up letter on October 7 sought certain "written materials" "concerning cessation of license application review."

I have enclosed an October 4, 2010, memorandum signed by both the NRC's Chief Financial Officer, James E. Dyer, and the NRC's Executive Director for Operations, Richard W. Borchardt. The Dyer-Borchardt memorandum provides guidance to NRC staff offices on budget execution, given that Congress has not yet acted on NRC's Fiscal Year 2011 budget submission. The agency currently is operating under a Continuing Resolution (CR) that expires on December 3 (Pub. L. 111-242, 124 Stat. 2607 (Sept. 30, 2010)).

With respect to the high-level waste program, the Dyer-Borchardt memorandum states that the CR "does not include specific restrictions on spending funds." It then directs the NRC staff to "continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget using available Nuclear Waste Fund resources during the CR."

The Commission's proposed FY 2011 budget – issued in early 2010 and available on NRC's website – pointed to DOE's possible filing of a motion to withdraw its Yucca Mountain application, and sought sufficient resources (ten million dollars) for "orderly closure" of NRC's effort. *See* NUREG-1100, Volume 26, *Congressional Budget Justification for FY 2011* (Feb. 2010), at pp. 9-10, 55-57, 94-95. "This would involve archiving material, completion of some technical work, knowledge capture and management, and maintenance of certain electronic systems to support these efforts." *Id.* at 95.

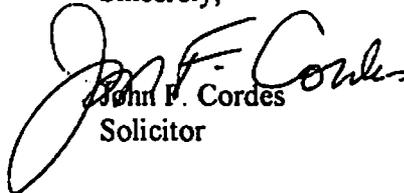
I cannot provide further information on this subject in advance of Commission consideration of the "Motion for a Commission Order Restoring the Technical Review of

the Yucca Mountain License Application” that you, along with your colleagues representing South Carolina and Aiken County, filed late last week. In addition, related issues remain before the Commission on Nevada’s “Petition for Relief with Respect to Possible Issuance of a Partial Safety Evaluation Report for Yucca Mountain” (filed June 14, 2010).

As for your request for a copy of written communications to the NRC staff from Chairman Jazcko or from other NRC Commissioners “concerning the cessation of license application review,” I have inquired and identified no such documents. Your letter also seeks documents containing staff-to-staff communications. Other than the enclosed Dyer-Borchardt memorandum, I am aware of no such documents, but I hasten to add that I have not surveyed the entire NRC staff, which is quite large.

To avoid any future misunderstanding, please do not construe my response to your inquiry as agreement with the suggestion in your October 6 letter that information on NRC budget execution during the CR period relates to your pending litigation or falls under any mandatory-disclosure obligation. As you know, the Federal Rules of Appellate Procedure provide for no discovery in direct-review actions in the courts of appeals. The NRC maintains a public website, where many NRC documents are publicly available, as well as a Freedom of Information Act program enabling the public to seek additional agency records.

Sincerely,



John F. Cordes  
Solicitor

cc: Service list in *In re Aiken County*, No. 10-1050 & consolidated cases (D.C. Cir.)



# Sustainable Fuel Cycle TASK FORCE

www.sustainablefuelcycle.com

Sustainable Fuel Cycle Task Force Science Panel

October 14, 2010

Dear Chairman Jaczko,

On behalf of the Sustainable Fuel Cycle Task Force Science Panel, we are writing to you and your fellow Commissioners to express our strong objection to the NRC staff being directed to stop work on the nearly completed Volume III Yucca Mountain Safety Evaluation Report. We urge that the NRC staff be allowed to complete their work in accordance with the Nuclear Waste Policy Act.

The NRC has spent over \$500 million dollars during the last 25 years examining the public health and safety aspects of Yucca Mountain and is now just weeks away from reaching very important scientific conclusions regarding the long term performance of the site. The public and scientific community has a right to know the NRC staff conclusions regarding their comprehensive analyses of the performance of the site relative to the stringent NRC and EPA regulations.

We understand the Administration would like to withdraw the Yucca Mountain license application, but it has not been withdrawn. Furthermore, the Atomic Safety and Licensing Board has determined that the Nuclear Waste Policy Act dictates that the application may not be withdrawn and that licensing continue unless Congress changes the statute. There has been no Congressional action to justify halting the ongoing staff review, thus the staff scientific work to complete their Safety Evaluation Report sections should be allowed to continue.

The global scientific community has great respect for the technical competence of the NRC staff and deserves to see the results of the staff's regulatory performance findings. The NRC staff and the Commission have a long-standing tradition of independence from considerations of cost, schedule, and political influence when rendering its decisions and in providing complete and accurate information to the public.

We respectfully request that the Commission reverse the "stop work" direction and allow the staff to finish their work and release their findings to the public. Free, open and transparent access to all scientific information is a critical foundation for the establishment of an effective waste disposal program for the future.

Sincerely,  
Science Panel

*Isaac Winograd*

Isaac Winograd, Ph.D.

*Wendell D. Weart*

Wendell Weart, Ph.D.

*Eugene H. Roseboom Jr*

Eugene H. Roseboom Jr., Ph.D.

*Charles Fairhurst*

Charles Fairhurst, Ph.D.

*D. Warner North*

D. Warner North Ph.D.

CC: Commissioner Kristine L. Svinicki, U.S. Nuclear Regulatory Commission  
Commissioner George Apostolakis, U.S. Nuclear Regulatory Commission  
Commissioner William D. Magwood, IV, U.S. Nuclear Regulatory Commission  
Commissioner William C. Ostendorff, U.S. Nuclear Regulatory Commission  
R. William Borchardt, Executive Director of Operations, U.S. Nuclear Regulatory Commission  
James Dyer, Chief Financial Officer, U.S. Nuclear Regulatory Commission

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER SVINICKI  
**SUBJECT:** COMWCO-10-0002 – COMMISSION DIRECTION ON  
STAFF BUDGET GUIDANCE UNDER FISCAL YEAR  
(FY) 2011 CONTINUING RESOLUTION

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached XX None \_\_\_

  
\_\_\_\_\_  
SIGNATURE

10/14/10  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

**Commissioner Svinicki's Comments on COMWCO-10-0002**  
**Commission Direction on Staff Budget Guidance Under**  
**Fiscal Year 2011 Continuing Resolution**

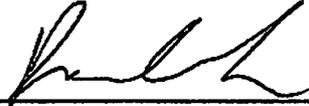
I approve Commissioner Ostendorff's proposal, contained in COMWCO-10-0002, that during the pendency of the Fiscal Year 2011 Continuing Resolution, the staff continue to follow its schedule for completing and issuing the Safety Evaluation Report (SER) volumes and further, that the staff continue to work on any remaining SER volumes until fiscal year 2010 funds are exhausted. I agree that, whatever the ultimate disposition of the Yucca Mountain license application and associated activities, complete SER documents should be a matter of public record and will be the best vehicle to memorialize the scientific knowledge and analysis gained during the technical review. Consequently, the staff should continue to work on and issue the remaining SER volumes according to its stated schedule, at the rate for operations appropriate given the proposed fiscal year 2011 budget, as augmented by prior year high-level waste (HLW) carryover funds and fiscal year 2010 reprogrammed HLW funds remaining from fiscal year 2010 appropriations.

I fundamentally disagree with the direction contained in the October 4, 2010 memorandum, issued by the Executive Director for Operations and Chief Financial Officer, instructing Staff to follow the Commission's fiscal year 2011 budget direction for carrying out HLW review activities during the continuing resolution. I find this directive inconsistent with the intent of the Continuing Resolution. Section 101 of the Fiscal Year 2011 Continuing Resolution provides that the funds to be appropriated are those "as provided in the applicable appropriations Act for fiscal year 2010 and under the authority and conditions provided in such Acts, for continuing projects or activities . . . that are not otherwise specifically provided for in this Act." Since the Continuing Resolution does not specifically provide for the NRC to follow its fiscal year 2011 budget request, nor does it provide specific limitations on the use of HLW funds, the NRC should continue to carry out the Yucca Mountain review activities in accordance with its fiscal year 2010 budget to "support the ongoing license review by funding the NRC staff conducting technical license application review activities."

In contrast, the fiscal year 2011 budget request – which is currently sitting before Congress – describes the "orderly closure" of technical review activities, including knowledge capture and management, and archiving of material. But this is not all that the fiscal year 2011 budget states with respect to the HLW program. It also explains that "orderly closure" activities are conditioned upon certain events taking place first: "Upon withdrawal or suspension of the licensing review, the NRC would begin an orderly closure..." Neither of these events has occurred, and commencing closure activities now is contrary to the Commission's express direction. Therefore, my view on the appropriate scope of activities under the continuing resolution is further fortified by the fact that the conditions for transitioning to orderly closure of the review have not been met.

Furthermore, at the time of the Commission's deliberations on the fiscal year 2011 budget proposal, the Administration was contemplating options for the Yucca Mountain license application and the Department of Energy (DOE) had not submitted its motion to withdraw. My approval of the fiscal year 2011 budget proposal was predicated on continuing the technical review of the application, while recognizing that the NRC's ability to do so was influenced by other imponderables, such as DOE's ability to support the review. The "fog of war" environment that clouded the future of the Yucca Mountain license application could not, and did not, anticipate with any precision the circumstances that the NRC faces today.

Ultimately, I agree that this is a significant policy matter warranting Commission deliberation and action. In my opinion, we would have been better served had the CR guidance memorandum, at the very least, requested Commission direction on the use of Nuclear Waste Fund resources during the continuing resolution. Absent that request, however, I support fully Commissioner Ostendorff's proposal.

  
\_\_\_\_\_  
Kristine L. Svinicki 10/19/10



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

October 16, 2010

The Honorable Warren F. Miller, Jr.  
Assistant Secretary for Nuclear Energy  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

Dear Dr. Miller:

The U.S. Nuclear Waste Technical Review Board held a public meeting in Idaho Falls, Idaho, on June 29, 2010. The principal topics were (1) management and ultimate disposition of the spent nuclear fuels (SNF) and high-level radioactive wastes (HLW) that are the responsibility of the U.S. Department of Energy's Idaho Operations Office (DOE-ID) and the Naval Nuclear Propulsion Program and (2) future technologies and activities that could affect the amounts and forms of SNF and HLW that will require management and disposal or could affect the radioactive hazard levels of the SNF and HLW over time.

Several of the 11 people who made presentations at the meeting were employees of DOE's Office of Nuclear Energy (DOE-NE). We greatly appreciate their participation and the quality of their presentations.

The Board was established as an independent federal agency in the 1987 amendments to the Nuclear Waste Policy Act. The Board's statutory role is to review the technical validity of activities undertaken by the Secretary of Energy related to implementation of the Nuclear Waste Policy Act. The Board reports its findings and recommendations to Congress and the Secretary of Energy at least twice a year. According to the legislative history, the Board is expected to make its recommendations before decisions are made, not after the fact. Thus, the Board established a practice many years ago of sending a follow-up letter after each of its public meetings to the appropriate DOE program managers. This letter continues that practice.

#### **Extended Storage and Subsequent Transportation of SNF**

When a repository or storage location for SNF will be available is not known at this point, and that uncertainty may continue well into the future. The Board believes that studies should be undertaken to identify and plan for actions that are needed for preventing problems from occurring during the transportation, repackaging, or disposal of SNF following *extended* periods of dry storage. Studies of the safety, cost, and technical issues associated with various alternatives for managing, packaging, and transporting the SNF also would be invaluable to the Blue Ribbon Commission for America's Nuclear Future, to the Office of Environmental Management for its long-term planning, and to the Board in setting priorities for its technical peer review.

## **DOE-NE's Used Nuclear Fuel Disposition Program**

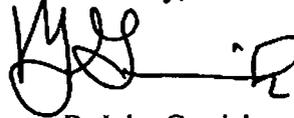
The Board realizes that the Used Nuclear Fuel Disposition Program is still in its formative phase and may be affected by congressional direction and funding for fiscal year 2011. A program that identifies alternatives and conducts scientific research and technology development to enable and optimize storage, transportation, and disposal of SNF and HLW generated by existing and future nuclear-fuel cycles would be helpful to decision-makers and technology-implementers. Each element of the program should have clear objectives and be integrated with other DOE-NE programs, particularly those of the Office of Fuel Cycle Research and Development.

Some aspects of DOE-NE's Used Nuclear Fuel Disposition Program proposed for fiscal year 2011 appear similar to the Science & Technology (S&T) Program that DOE's Office of Civilian Radioactive Waste Management (DOE-RW) established in 2003. The S&T Program was explicitly distinct from the mainline DOE-RW activity of developing an application for a license to construct a repository at Yucca Mountain. The goals of the S&T Program were to (1) improve existing technologies and develop new technologies for achieving efficiencies and savings in the waste management system and (2) increase fundamental understanding of repository performance. Although intended to be permanent, the program was suspended in 2008, just when it had assembled several teams of highly qualified engineers and scientists who were producing significant results. The Board strongly endorsed the S&T program. In the Board's view, the need for a similar effort, such as the one being defined by the Used Nuclear Fuel Disposition Program, is even greater now because the scope of scientific and technical options has grown substantially. However, the experience of the S&T program demonstrates that a fully successful program requires continuity.

According to the proposed fiscal year 2011 budget for the Used Nuclear Fuel Disposition Program presented at the meeting, \$12 million is allocated to "science programs transferred from RW to NE." Because the level of science activity in the fiscal year 2010 DOE-RW program appears much smaller, the Board would appreciate receiving more information about the science programs that will be transferred from DOE-RW to DOE-NE.

Thank you for helping make the Board's meeting in Idaho Falls a success.

Sincerely,

A handwritten signature in black ink, appearing to read "B. John Garrick". The signature is stylized and cursive, with a long horizontal line extending to the right.

B. John Garrick  
Chairman

**Congress of the United States**  
Washington, DC 20515

October 19, 2010

Mr. Hubert T. Bell  
Inspector General of the Nuclear Regulatory Commission  
11545 Rockville Pike  
Rockville, MD 20852

Dear Mr. Bell,

Recent news reports have indicated that Chairman Gregory Jaczko is delaying a ruling on whether the Department of Energy has the legal authority to withdraw the license for the Yucca Mountain Repository in Nevada. Because of these reports, we are asking you to convene a formal investigation into the Chairman's recent actions to shut down the project.

As you know, Yucca Mountain was designated as the nuclear waste repository by the United States Congress in legislation signed by the President as part of the Nuclear Waste Policy Act of 1982 (NWP), as amended in 1987. In 2002, Congress passed a Joint Resolution reaffirming the site as the country's nuclear waste repository. Despite these actions and the fact that Congress to date has continued to provide funding for Yucca Mountain, the actions by the Chairman make us concerned that he has overstepped his authority by making a decision to terminate the review of the license application based on his FY 2011 budget request, which has yet to be approved by Congress. We are concerned that this unilateral decision by the Chairman is undermining the intent of the Congress and possibly the Commission, as it is our understanding that at least one Commission member has issued a memo detailing his objections to the Chairman's actions.

Countless times Congress has reaffirmed that we must have a permanent storage site to protect the public and the environment, as well as to continue to develop nuclear power in the United States. Nuclear power accounts for twenty percent of our electricity supply and is expected to grow substantially in the next several decades. Additionally, the average nuclear plant generates approximately \$430 million in the local community and the operation of a nuclear plant creates 400 to 700 permanent jobs. Any delay to advance nuclear power places our economy and national security at risk. Playing political games with this issue, which has been suggested in the news, has already cost taxpayers \$1 billion through lawsuits filed and that number is expected to increase to over \$50 billion in the next twenty years, not to mention that the federal government has already spent \$9 billion constructing the Yucca Mountain project and this would also be wasted money. At a time when we have a nearly \$14 trillion debt, these actions are unwise and deserve your attention. Therefore, we appreciate your fair and expedited review of the Chairman's actions and this situation.

Thank you for your attention to this matter.



Fred Upton  
Member of Congress



Ed Whitfield  
Member of Congress

DAVID R. OBEY, WISCONSIN, CHAIRMAN  
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ALAN B. MOLLOHAN, WEST VIRGINIA  
MARCY KAPTUR, OHIO  
PETER J. VISCLOSKEY, INDIANA  
NITA M. LOWEY, NEW YORK  
JOSE E. SERRANO, NEW YORK  
ROSA L. DE LAURO, CONNECTICUT  
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MAURICE D. HINCHAY, NEW YORK  
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SAM FARR, CALIFORNIA  
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CAROLYN C. KILPATRICK, MICHIGAN  
ALLEN BOYD, FLORIDA  
CHAKA FATTAH, PENNSYLVANIA  
STEVEN R. ROTHMAN, NEW JERSEY  
SANFORD D. BISHOP, JR., GEORGIA  
MARION BERRY, ARKANSAS  
BARBARA LEE, CALIFORNIA  
ADAM SCHIFF, CALIFORNIA  
MICHAEL HONDA, CALIFORNIA  
BETTY MCCOLLUM, MINNESOTA  
STEVE ISRAEL, NEW YORK  
TIM RYAN, OHIO  
C.A. "DUTCH" RUPPERSBERGER, MARYLAND  
BEN CHANDLER, KENTUCKY  
DEBBIE WASSERMAN SCHULTZ, FLORIDA  
CIRO RODRIGUEZ, TEXAS  
LINCOLN DAVIS, TENNESSEE  
JOHN T. SALAZAR, COLORADO  
PATRICK J. MURPHY, PENNSYLVANIA

**Congress of the United States**  
**House of Representatives**  
**Committee on Appropriations**  
**Washington, DC 20515-6015**

JERRY LEWIS, CALIFORNIA  
C. W. BILL YOUNG, FLORIDA  
HAROLD ROGERS, KENTUCKY  
FRANK R. WOLF, VIRGINIA  
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TOM COLE, OKLAHOMA

CLERK AND STAFF DIRECTOR  
BEVERLY PHEO  
TELEPHONE:  
(202) 225-2771

October 20, 2010

The Honorable Gregory B. Jaczko  
Chairman  
United States Nuclear Regulatory Commission  
Mail Stop O-16G4  
Washington, DC. 20555-0001

Dear Chairman Jaczko:

We are writing to protest your premature and partisan closure of the Nuclear Regulatory Commission's (NRC's) consideration of the Yucca Mountain license application. We are concerned that your actions call into question whether the NRC, under your leadership, will be able to maintain its historical role as an independent regulatory and oversight body. If continued, your actions may seriously erode the NRC's relationship with this subcommittee.

On October 4, 2010, NRC's staff received your guidance on program execution during the fiscal year 2011 continuing resolution (CR). Your direction states that, "...staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget...". You were also recently quoted as saying, "From an administrative standpoint I'm moving the agency to close down because that's really what our Fiscal

Year 2011 budget guidance is. That process will continue absent some other direction from Congress.”

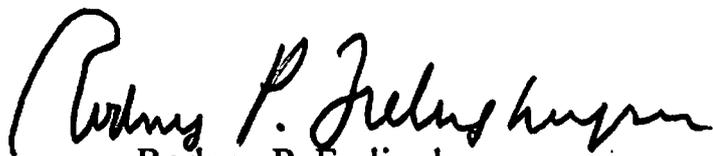
Mr. Chairman, the NRC’s fiscal year 2011 budget request is irrelevant under the CR. Congress has approved only your fiscal year 2010 budget request, which did not include funding to shut down the Yucca Mountain license application. We expect that you will continue your fiscal year 2010 activities until Congress provides you additional funding and direction. Furthermore, we question the responsibility of your actions, considering that the NRC’s Atomic Safety and Licensing Board has rejected the Department of Energy’s motion to withdraw the application and you and your fellow Commissioners have not overturned this decision.

It is our constitutional duty to provide funding, oversight, and at times explicit direction on how the Commission, or any governmental agency, for that matter, executes its programs. If you continue to shut down the Yucca Mountain license application, which can only be seen as a partisan act, we will reconsider the flexibilities which the NRC has long enjoyed due to its reputation as an independent body.

Sincerely,



Jerry Lewis  
Ranking Member  
House Appropriations Committee



Rodney P. Frelinghuysen  
Ranking Member  
House Appropriations Committee  
Subcommittee on Energy  
and Water Development



Zach Wamp  
Member  
House Appropriations Committee  
Subcommittee on Energy  
and Water Development



Michael K. Simpson  
Member  
House Appropriations Committee  
Subcommittee on Energy  
and Water Development



Dennis R. Rehberg  
Member  
House Appropriations Committee  
Subcommittee on Energy  
and Water Development



Ken Calvert  
Member  
House Appropriations Committee  
Subcommittee on Energy  
and Water Development



Rodney Alexander  
Member  
House Appropriations Committee  
Subcommittee on Energy  
and Water Development



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

October 21, 2010

The Honorable Inés R. Triay  
Assistant Secretary for Environmental Management  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

Dear Dr. Triay:

The U.S. Nuclear Waste Technical Review Board held a public meeting in Idaho Falls, Idaho, on June 29, 2010. The principal topics were (1) management and ultimate disposition of the spent nuclear fuels (SNF) and high-level radioactive wastes (HLW) that are the responsibility of the U.S. Department of Energy's Idaho Operations Office (DOE-ID) and the Naval Nuclear Propulsion Program and (2) future technologies and activities that could affect the amounts and forms of SNF and HLW that will require management and disposal or could affect the radioactive hazard levels of the SNF and HLW over time.

Several of the 11 people who made presentations at the meeting were employees of DOE-ID. We greatly appreciate their participation and the quality of their presentations.

The Board was established as an independent federal agency in the 1987 amendments to the Nuclear Waste Policy Act. The Board's statutory role is to review the technical validity of activities undertaken by the Secretary of Energy related to implementation of the Nuclear Waste Policy Act. The Board reports its findings and recommendations to Congress and the Secretary of Energy at least twice a year. According to the legislative history, the Board is expected to make its recommendations before decisions are made, not after the fact. Thus, the Board established a practice many years ago of sending a follow-up letter after each of its public meetings to the appropriate DOE program managers. This letter continues that practice.

#### **DOE-ID Spent Nuclear Fuel**

Much of the SNF under the jurisdiction of DOE-ID already is in dry storage, and plans are under way to move the remaining SNF to dry storage. The Board has not identified any immediate technical issues with dry storage of this SNF. However, the Board recommends that the as-built lifetimes (as opposed to the design lifetimes) of all SNF dry-storage systems under DOE-ID's responsibility be assessed because it is not known at this point when a repository or storage location outside Idaho will be available, and that uncertainty may continue well into the future. In addition, the Board believes that studies should be undertaken to identify and plan for actions that are needed for preventing problems from occurring during the transportation, repackaging, or disposal of SNF following *extended*

periods of dry storage. Studies of the safety, cost, and technical issues associated with various alternatives for managing, packaging, and transporting the SNF also would be invaluable to the Blue Ribbon Commission for America's Nuclear Future, to the Office of Environmental Management for its long-term planning, and to the Board in setting priorities for its technical peer review.

DOE's National Spent Nuclear Fuel Program carried out extensive work in developing packaging systems that would be acceptable for disposal in a repository at Yucca Mountain. Whether the size, materials of construction, or other attributes of packaging developed for the Yucca Mountain repository would be suitable for other geologic disposal media is not known. Consequently, analysis of the issues associated with disposing of DOE-ID and other DOE-owned SNF in geologic settings other than unsaturated tuff would be appropriate. The Board recommends that DOE undertake such studies. This would include reexamination of studies performed more than 25 years ago in the United States as well as examining more-recent geologic disposal efforts of other countries.

### **DOE-ID Calcine**

Virtually all of the liquid HLW at Idaho National Laboratory was calcined years ago into a solid granular form and is being stored in shielded bins. The design lifetime of the bin storage system is asserted to be 500 years. Designing a civil system made from ferrous alloys and concrete for such a period is unprecedented. The technical basis for the design lifetime estimate should be examined in detail, and the results of the examination — including any assumptions regarding inspection and maintenance frequencies — should be conveyed to the programs within DOE carrying out research on very-long-term dry storage. The results also should be transmitted to outside entities now carrying out such research, including the Electric Power Research Institute and the U.S. Nuclear Regulatory Commission.

In December 2009, DOE decided to treat the calcine by hot isostatic pressing before transporting it off the site. The decision was based in part on a cost estimate comparing various treatment alternatives. A key technical assumption affecting this decision was that treated calcine would be loaded into "standardized canisters" (2 feet in diameter by 10 feet or 15 feet long) that would subsequently be loaded into larger outer containers for storage, transportation, and disposal. This assumption may not be necessary for some treatment methods yet may increase the number of containers requiring storage, transportation, and disposal. In addition, it is not clear whether the operational risk of various treatment options was taken into account or whether probabilistic risk assessments (PRAs) were performed on the safety of the various alternatives after disposal in a repository. The Board believes that another cost comparison should be conducted that takes into consideration appropriate technical assumptions and the aforementioned risks.

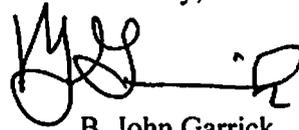
### **DOE-ID Sodium-Bearing Waste**

Whether sodium-bearing waste (SBW) is a high-level waste remains an open matter that appears to be more of a regulatory issue than a technical one. Perhaps a risk assessment could help in the determination. In any case, we agree that changing the SBW from its current liquid form to a solid form is necessary.

More technical detail would be helpful in understanding and evaluating the basis for the selection of steam reforming for treating SBW. Although steam reforming is not a new technology, using it to treat SBW is a novel application. If SBW is classified as a high-level waste, the characteristics of the final waste form resulting from treating SBW with steam reforming and the final disposition of the resulting solid would be of particular interest to the Board.

Thank you for helping make the Board's meeting in Idaho Falls a success.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. John Garrick', written in a cursive style.

B. John Garrick  
Chairman



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

**FALL MEETING AGENDA**  
**Tuesday, October 26, 2010**  
Washington Dulles Airport Marriott, Salons A/B/C  
45020 Aviation Drive  
Dulles, VA 20166  
(T) (703)-471-9500 (F) (703)-661-8714

**TOPIC FOR THE MEETING:**  
**TECHNICAL EXPERIENCE GAINED DURING DEVELOPMENT**  
**OF THE YUCCA MOUNTAIN REPOSITORY PROGRAM**

**8:30 a.m.**                    **Call to Order and Opening Statement**  
B. John Garrick, Chairman  
U.S. Nuclear Waste Technical Review Board

**9:00 a.m.**                    **PANEL 1: VIEW FROM WITHIN THE PROJECT**

**Moderator:**  
Thure Cerling, NWTRB Member

**Panelists:**

- Russell Dyer, Former Project Manager and Chief Scientist, Yucca Mountain Project Office
- Tom Coleman, Former Subsurface Engineering Manager for USA RS
- Ted Feigenbaum, Former General Manager, Bechtel-SAIC Company, Ltd.
- Jean Younker, Former Deputy Assistant General Manager, Bechtel-SAIC Company, Ltd.

**Each Panelist will be invited to make a presentation of approximately 15 minutes based on the following questions:**

1. What technical advances were made during development of the program that would be applicable in developing future programs for management of SNF and HLW in the U.S.?
2. What scientific research, or technical development work, should be undertaken now, or in the near term, to support future development of a repository for disposal of SNF and HLW?
3. How did different managerial approaches and changes in management approach during the development of the program, influence the technical design, planned operations and logistics of the Yucca Mountain Program?

**10:00 a.m.**                    *Questions and Discussion*

**11:00 a.m.**                    **BREAK**

**11:15 a.m. PANEL 2: VIEW FROM STATE AND LOCAL GOVERNMENTS**

**Moderator:**

George Hornberger, NWTRB Member

**Panelists:**

- Steve Frishman, Technical Consultant to the State of Nevada
- Abigail Johnson, Nuclear Waste Advisor, Eureka County, NV
- Irene Navis, Director of Emergency Management and Homeland Security, Clark County, NV
- Connie Simkins, Coordinator of Nuclear Oversight Program, Lincoln County, NV
- Joe Ziegler, Consultant on Nuclear Safety and Licensing, Nye County, NV

**Each Panelist will be invited to make a presentation of approximately 10 minutes based on the following questions:**

1. How has oversight performed by affected units of government in Nevada influenced technical decisions related to nuclear waste management and disposal? Please give examples.
2. What factors increased the effectiveness of the technical oversight? Conversely, what factors might have reduced the effectiveness of the oversight?
3. How does the performance of technical oversight affect the confidence of units of local government and the public in the validity of the technical process?

**12:05 p.m. *Questions and Discussion***

**1:00 p.m. LUNCH**

**2:15 p.m. PANEL 3: VIEW FROM OTHER COUNTRIES**

**Moderator:**

David Duquette, NWTRB Member

**Panelists:**

- Enrique Biurrun, DBE (Company for the Construction and Operation of Repositories for Radioactive Waste), Germany
- John Mathieson, Nuclear Decommissioning Authority, United Kingdom
- Gerald Ouzounian, Andra (National Agency for Radioactive Waste Management), France
- Olof Söderberg, Consultant to SKB (Swedish Nuclear Fuel and Waste Management Company), Sweden

**Each Panelist will be invited to make a presentation of approximately 15 minutes based on the following questions:**

- 1.As you were observing the Yucca Mountain program, what technical approaches seemed to be the most persuasive in terms of making a safety case? Which were the least persuasive? Which appeared to have a low probability of achieving their objective? Which seemed to be at odds with the prevailing international consensus?

- 2.If a new waste management and disposal effort were to be launched in the United States, what would be the three most important lessons your country has learned that should be taken into account?
4. Which aspects of the Yucca Mountain program and the repository program in your country indicate technical features or developments that should be avoided in developing a repository program in the U.S.?

- 3:15 p.m.                      Questions and Discussion**
- 4:15 p.m.                      Public Comments**
- 5:00 p.m.                      Adjourn Meeting**



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

COMMISSIONER

October 27, 2010

The Honorable Doc Hastings  
1203 Longworth House Office Building  
Washington, DC 20515-4704

Dear Congressman Hastings:

Thank you for your letter dated October 21, 2010. I share your view that the Nuclear Regulatory Commission's (NRC) work on the Yucca Mountain license application has been performed at the direction of Congress as required under the Nuclear Waste Policy Act. I firmly believe that Congress and the American public deserve to have the benefit of the information. In fact, I believe that the NRC is obligated to provide it.

With respect to the decision to halt all work on the Yucca Mountain license application, I have made my views available for the record in documents I released to the public earlier this month (see enclosed documents). In sum, I disagree with Chairman Jaczko's decision to transition to close out of the NRC's High-Level Waste Repository program, and I have voiced this disagreement to the Chairman, my other colleagues on the Commission, and the NRC staff. I endorse your view that the actions taken contravene the intent of the President's directive on openness and transparency.

Regarding your request for the current status of Volume III of the Yucca Mountain Safety Evaluation Report, it is my understanding that on July 15, 2010, Volume III was transmitted to the Director of the NRC's Office of Nuclear Material Safety and Safeguards for concurrence and authorization to publish. In light of the recent guidance to the NRC staff for the fiscal year 2011 Continuing Resolution, it is now my understanding that the NRC staff is no longer working on Volume III. Instead, the NRC staff will be developing a separate report to document its technical review activities completed to date. It is also my understanding that this report will not contain any specific regulatory findings made by the NRC staff with respect to the Yucca Mountain license application.

Concerning your request for a copy of the latest draft of Volume III and the associated data to compile the report, I have forwarded your request to the NRC's Office of Congressional Affairs.

I am available to respond to any further inquiries you may have on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Ostendorff".

William C. Ostendorff

Enclosures:  
as stated

October 27, 2010

**The Honorable Jim Sensenbrenner  
Ranking Member, Select Committee on  
Energy Independence and Global Warming  
United States House of Representatives  
Washington, D.C. 20515**

**Dear Congressman Sensenbrenner:**

**This letter is in response to your letter of October 13, 2010, in which you expressed concerns about reports regarding the U.S. Nuclear Regulatory Commission's (NRC's) review of the U.S. Department of Energy license application seeking to construct a geologic repository at Yucca Mountain, Nevada. You also requested answers to six questions. My responses to those questions are enclosed.**

**As detailed in my enclosed responses, I want to assure you that the approach the NRC is following is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past NRC practice.**

**I appreciate your interest in our high-level waste program and will keep you informed of NRC activities in this regard, and would be happy to meet with you to discuss this matter further.**

**Sincerely,**

***/RA/***

**Gregory B. Jaczko**

**Enclosure:  
Responses to Questions**

**Identical letters sent to:**

**The Honorable Jim Sensenbrenner  
Ranking Member, Select Committee on  
Energy Independence and Global Warming  
United States House of Representatives  
Washington, D.C. 20515**

**The Honorable Joe Barton  
Ranking Member, Energy and Commerce  
Committee  
United States House of Representatives  
Washington, D.C. 20515**

**The Honorable Ralph M. Hall  
Ranking Member, Science and Technology  
Committee  
United States House of Representatives  
Washington, D.C. 20515**

**The Honorable Doc Hastings  
Ranking Member, Natural Resources Committee  
United States House of Representatives  
Washington, D.C. 20515**

## Responses to Questions

### QUESTION 1.

On what legal authority are you grounding your decision to terminate review of the license application based on a budget request, rather than existing law?

### ANSWER.

Neither the text of the Fiscal Year (FY) 2010 Energy and Water Development and Related Agencies Appropriations Act and its underlying committee reports, nor the Fiscal Year 2011 Continuing Resolution provide the Commission with express direction on how it is to expend its appropriations from the Nuclear Waste Fund for Yucca Mountain activities. In the absence of an express direction, the approach the NRC is following is consistent with the terms of the Continuing Resolution, the Commission's Fiscal Year 2011 budget request, the general principles of appropriations law, and past U.S. Nuclear Regulatory Commission (NRC) practice. The Commission declined to revisit this decision in voting earlier this month.

As you know, in FY 2010, the NRC requested \$56 million for its High-Level Waste (HLW) program, but Congress only appropriated \$29 million. The NRC requested an appropriation of \$10 million for the HLW program in FY 2011, or about a third of the FY 2010 appropriation. Both the Senate Appropriations Committee and the Energy and Water Development subcommittee of the House Appropriations Committee approved that sum for FY 2011.

Under these circumstances, the path that the NRC is following is consistent with NRC's obligation to spend funds prudently under a Continuing Resolution pending final budget action by the Congress. See Section 110 of Pub. L. 111-242, 124 Stat. 2607 (Sept. 30, 2010); OMB Circular No. A-11, §123.2 (2010).

### QUESTION 2.

What specific actions have been taken or will be taken to terminate review of the license application, including all actions related to NRC staff review of the application?

### ANSWER.

Pursuant to the guidance issued by the Executive Director of Operations and the Chief Financial Officer, staff is beginning an orderly closure of the program. No specific actions have yet been taken to terminate the program. Rather the first step of this process is to preserve the staff's work products, and complete and implement a detailed and comprehensive plan for this effort. The entire process is expected to take at least a year and include documenting the staff's review and other knowledge concerning the program by means such as comprehensive technical reports and videotaped interviews of technical staff.

### QUESTION 3.

How does halting NRC review of the license application influence the pending appeal of ASLB's ruling?

### ANSWER.

The staff is following established Commission policy to begin to close out the HLW program. These actions are separate from our hearing process and any decision the Commission may make to review the Atomic Safety and Licensing Board's (ASLB's) ruling and decide whether to uphold or reverse their decision concerning the formal status of the U.S. Department of Energy's (DOE's) application.

Enclosure

**QUESTION 4.** How will your decision impact future legal challenges to DOE's motion to withdraw?

**ANSWER.**

Currently the United States Court of Appeals for the District of Columbia has held related proceedings in abeyance pending NRC action. *In re Aiken County*, No. 10-1050 (and consolidated cases)(D.C. Cir.). I am not in a position to speculate on how this court or any future court will respond to NRC's actions.

**QUESTION 5.** How are you ensuring that NRC is prepared to resume consideration of the license application if the commission and courts uphold ASLB's decision?

**ANSWER.**

The staff is beginning to transition to close out for the reasons outlined above. By thoroughly documenting the staff's technical review and preserving it as appropriate for publication and public use, the agency will be able to respond to direction from the Congress or the courts.

**QUESTION 6.** What communication specifically relating to this decision have you had with the offices of Secretary of Energy Chu, Senate Majority Leader Reid, or the White House.

**ANSWER.**

Consistent with my role as Chairman of an independent regulatory commission, members of my staff and I informed the White House and a select number of Members of the Congress, including NRC's authorizers and appropriators as well as Senator Reid, on a bipartisan basis, of the budgetary decision to begin to transition to close out of NRC's HLW activities. Neither I, nor anyone on my staff, had communication with the U.S. Department of Energy regarding this decision.



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[NRC COMMISSIONER OSTENDORFF: RELEASE OF KEY DOCUMENTS HALTED BY REVIEW STOPPAGE](#)

## EX-NRC CHAIRMAN KLEIN REBUFFS JACZKO YUCCA SHUT-DOWN ALIBI

October 29, 2010

Nuclear Townhall

In a stunning and remarkable open letter to journalists released late this afternoon, former U.S. Nuclear Regulatory Commission Chairman Dale E. Klein has rebutted a key assertion made by his successor – current Chairman Gregory Jaczko – with regard to Jaczko’s decision earlier this month “to terminate the ongoing NRC work on the Yucca Mountain license application.” Noting that Jaczko has repeatedly stated that “the Commission approved this budgetary approach for fiscal year 2011,” Klein, who was part of the budget deliberations, stated bluntly: “I do not agree with the Chairman’s assertion that his actions are consistent with the Commission’s FY2011 budget policy guidance.”

The Klein letter adds more fuel to an escalating firestorm between the increasingly embattled Jaczko and Congress spurred by the Chairman’s unilateral Yucca Mountain licensing application review stoppage. The action has resulted in a barrage of Congressional queries, the initiation of an investigation by Jaczko’s own Inspector General, legal filings in Federal Court, charges of political gamesmanship favoring Jaczko mentor Senate Majority Leader Harry Reid and an extraordinary statement by a NRC staff member in an open forum with Commissioners that agency personnel feel “betrayed.”

Klein added: “The FY 2011 budget was developed during the summer and fall of 2009 and ultimately approved by the Commission in January 2010. During that time, there were only three NRC Commissioners. My fellow Commissioner Kristine Svinicki has already publicly expressed her disagreement with the Chairman’s actions. Let me make it clear, there was no intention by the Commission to approve, or even contemplate, a preemptive termination of the high-level waste (HLW) program. Our approach and guidance to agency staff was to sustain ongoing work while maintaining flexibility in the face of the Office of Management and Budget’s directions concerning the HLW program.”

Klein charged that “it is not appropriate for Chairman Jaczko to continue to rationalize his actions as being consistent with the Commission’s FY 2011 budget guidance. Doing so implies that I and Commissioner Svinicki are complicit in authorizing his actions, and that is clearly not the case.”

According to Klein, the continuing resolution budget guidance for the agency’s Yucca Mountain review “should have been handled as a Commission policy matter, with the full participation of the Commission and, most certainly, in consultation with Congress.

“Lastly, having served as Chairman, I believe I have a reasonable understanding of the legal authority of the Chairman’s office to address administrative matters such as budget issues. I would not consider the closeout of the HLW application technical review to be a simple reassignment of personnel or routine reallocation of resources. Rather, the actions taken are the implementation of a major national policy decision that has not been acted on by the Commission or authorized by Congress,” Klein said.

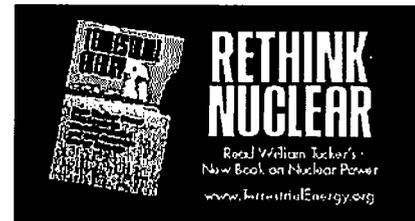
The full text of the Klein letter follows:

### Open Letter to Journalists—

As a former Chairman of the Nuclear Regulatory Commission, I wish to address a particular point raised by the current Chairman, Gregory Jaczko, in the controversy surrounding his decision to terminate the ongoing NRC work on the Yucca Mountain license application. Chairman Jaczko has repeatedly stated that “the Commission approved this budgetary approach for fiscal year 2011”. I served as a member of the Commission during the fiscal year (FY) 2011 budget deliberations and was intimately involved in establishing the budget policy referred to by Chairman Jaczko. I do not agree with the Chairman’s assertion that his actions are consistent with the Commission’s FY 2011 budget policy guidance.

The FY 2011 budget was developed during the summer and fall of 2009 and ultimately approved by the Commission in January 2010. During that time, there were only three NRC Commissioners. My fellow Commissioner Kristine Svinicki has already publicly expressed her disagreement with the Chairman’s actions. Let me make it clear, there was no intention by the Commission to approve, or even contemplate, a preemptive termination of the high-level waste (HLW) program. Our approach and guidance to agency staff was to sustain ongoing work while maintaining flexibility in the face of the Office of Management and Budget’s directions concerning the HLW program.

In December 2009, the HLW program was in flux. It was not known if the Department of Energy would request a withdrawal or suspension of the Yucca Mountain license application, the Blue Ribbon Commission on America’s Nuclear Future had not been formed, and the Congress had not engaged on how affected agencies would address their obligations under the Nuclear Waste Policy Act. While I may have anticipated some of the unfolding events, I could not have predicted all that has clouded this contentious issue. Clearly the conditions



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and assumptions that the Commission relied upon in developing our FY 2011 budget approach changed over time, and a recalibration would have been appropriate.

Since the majority of current commissioners chose not to reconsider the budget guidance, the guidance which I helped to create remains in force. It is not appropriate for Chairman Jazcko to continue to rationalize his actions as being consistent with the Commission's FY 2011 budget guidance. Doing so implies that I and Commissioner Svinicki are complicit in authorizing his actions, and that is clearly not the case. Having served as NRC Chairman during several budget cycles, I believe that the continuing resolution budget guidance for the HLW program should have been handled as a Commission policy matter, with the full participation of the Commission and, most certainly, in consultation with Congress.

Lastly, having served as Chairman, I believe I have a reasonable understanding of the legal authority of the Chairman's office to address administrative matters such as budget issues. I would not consider the closeout of the HLW application technical review to be a simple reassignment of personnel or routine reallocation of resources. Rather, the actions taken are the implementation of a major national policy decision that has not been acted on by the Commission or authorized by Congress.

Dale E. Klein, PhD.  
Former Chairman,  
U.S. Nuclear Regulatory Commission

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Tags: [Gregory Jazcko](#), [NRC](#), [Yucca Mountain](#)

This entry was posted on Friday, October 29th, 2010 at 5:26 pm and is filed under [NRC](#), [Yucca Mountain](#). You can follow any responses to this entry through the [RSS 2.0](#) feed. Both comments and pings are currently closed.



One Response to "EX-NRC CHAIRMAN KLEIN REBUFFS JACZKO YUCCA SHUT-DOWN ALIBI"

1. Eric Says:  
[October 30th, 2010 at 3:14 pm](#)

Thank you Dr Klein for illuminating this as it is very helpful for those who are trying to understand what is going on at the NRC. You served the Commission with dignity and integrity.

I can't ever recall a Commissioner coming under such an attack. It appears that Jazcko is corrupt and should resign.

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**NUCLEAR WASTE FUND  
RATEPAYER PAYMENTS BY STATE  
THROUGH 9-30-10 (MILLIONS OF DOLLARS)**

STATE	PAYMENTS	RETURN ON	TOTAL	FUND ASSETS**	
	1 mil/kwh, One Time+Int	INVESTMENTS as of 9/30/10	(PAY+RETURN)	DEBT*	(TOTAL + DEBT)
AL	533.9	425.7	959.6	0.0	959.6
AR	358.2	285.6	643.8	175.6	819.4
AZ	266.3	212.4	478.7	0.0	478.7
CA	1,020.3	813.6	1,833.9	0.0	1,833.9
CO	0.2	0.2	0.4	0.0	0.4
CT	295.9	236.0	531.9	358.5	890.4
DE	46.6	37.2	83.8	0.0	83.8
FL	842.4	671.8	1,514.2	0.0	1,514.2
GA	685.5	546.6	1,232.1	0.0	1,232.1
IA	249.4	198.9	448.3	45.1	493.4
IL	1,880.1	1,499.2	3,379.3	972.6	4,351.9
IN	252.1	201.0	453.1	229.9	683.0
KS	133.3	106.3	239.6	0.0	239.6
KY	152.1	121.3	273.4	0.0	273.4
LA	324.2	258.5	582.7	0.0	582.7
MA	356.1	284.0	640.1	163.4	803.5
MD	390.6	311.5	702.1	0.0	702.1
ME	48.5	38.7	87.2	116.9	204.1
MI	314.2	250.6	564.8	198.2	763.0
MN	316.6	252.5	569.1	0.0	569.1
MO	250.7	199.9	450.6	5.1	455.7
MS	161.7	128.9	290.6	0.0	290.6
NC	1,538.0	1,226.4	2,764.4	0.0	2,764.4
ND	18.0	14.4	32.4	0.0	32.4
NE	190.0	151.5	341.5	0.0	341.5
NH	82.2	65.5	147.7	23.8	171.5
NJ	732.3	584.0	1,316.3	196.8	1,513.1
NM	77.4	61.7	139.1	0.0	139.1
NY	850.8	678.4	1,529.2	505.3	2,034.5
OH	461.9	368.3	830.2	32.6	862.8
OR	75.1	59.9	135.0	0.0	135.0
PA	1,378.3	1,099.1	2,477.4	66.6	2,544.0
RI	5.3	4.2	9.5	6.1	15.6
SC	689.4	549.7	1,239.1	0.0	1,239.1
SD	7.1	5.7	12.8	0.0	12.8
TN	580.1	462.6	1,042.7	0.0	1,042.7
TX	801.1	638.8	1,439.9	0.0	1,439.9
VA	698.9	557.3	1,256.2	0.0	1,256.2
VT	100.2	79.9	180.1	141.6	321.7
WA	170.6	136.0	306.6	0.0	306.6
WI	428.2	341.5	769.7	0.0	769.7
<b>SUBTOTAL</b>	<b>17,763.8</b>	<b>14,165.3</b>	<b>31,929.1</b>	<b>3,238.1</b>	<b>35,167.2</b>
<b>FEDERAL</b>	<b>19.8</b>	<b>15.8</b>	<b>35.6</b>	<b>0.0</b>	<b>35.6</b>
<b>INDUSTRY</b>	<b>16.8</b>	<b>13.4</b>	<b>30.2</b>	<b>0.0</b>	<b>30.2</b>
<b>TOTAL</b>	<b>17,800.4</b>	<b>14,194.5</b>	<b>31,984.9</b>	<b>3,238.1</b>	<b>35,233.0</b>

\* Funds owed for fuel burned before 1983 but not yet paid by utilities (as allowed by DOE contract)

\*\* before withdrawals for expenditures by DOE

Prepared by Ron Howe, Michigan Public Service Commission, 517-241-6021, howe@michigan.gov