

**From:** Echols, Stan  
**Sent:** Tuesday, August 17, 2010 2:42 PM  
**To:** Jaczko, Gregory; Magwood, William; Apostolakis, George; Ostendorff, William; McCrary, Cheryl; Burns, Stephen  
**Subject:** Yucca Mountain Appeal

I worked for the AEC and NRC in the 1970s and then worked in private industry. A few years ago, I returned to the NRC. At that time I told my wife that I hoped that I wasn't remembering the dedication and commitment of the people in the agency through rose colored glasses. Shortly after returning, I told my wife that although it was hard to believe, I found the professionalism, dedication and teamwork I remembered so fondly was alive and well and, if anything, much improved. It was a joy to return. The NRC is a great place to work for many reasons. High among them is a personal and institutional commitment to act with integrity and impartiality in every activity every day, without even the appearance of impropriety. I believe that the embodiment of this commitment was Commissioner McGaffigan. Recently, I have been surprised by how many of my colleagues have expressed a concern that this commitment may be eroding within the Commission. The reason for this concern is a perception that the Commission may be biased in favor of ruling against the ASLB regarding its recent ruling against the Department of Energy's (DOE's) request to withdraw its license application.

There are two primary bases for this concern. The first is that in order for three Commissioners to get confirmed, each promised Senator Reid of Nevada, through a question provided to Senator Barbara Boxer, that they would support DOE on this issue. It is noteworthy that Senator Reid has built his career around his opposition to the Yucca Mountain Project. Thus, it appears that Senator Reid received an unqualified vote commitment from each in exchange for their appointment. This is compounded by the President's promise to Senator Reid that the Yucca Mountain project would end. The second basis is the long-term and close relationship between Chairman Jaczko and Senator Reid when the Chairman worked for Senator Reid. As a result of this relationship, Senator Reid later recommended him to the President to become a commissioner and later to be the Chairman of the Commission. Despite the fact that each of these men is very highly qualified and respected in their respective professions, there is nevertheless a taint, or more accurately, a perceived taint, with respect to this particular issue.

Because the Commission may be acting in a quasi judicial role in this proceeding regarding its review of the ASLB, a panel of administrative law judges (ALJs), I believe that the ABA Model Code of Conduct for Administrative Law Judges may be applicable, or at least instructive, as is this agency's own code of conduct. Under the ABA Model Code of Conduct, ALJs are admonished to avoid even the appearance of impropriety and to perform their duties independently, and not to let political or other relationships influence their conduct. As I understand it, this includes avoiding behavior that might be perceived as prejudicial.

The actions of these commissioners is being closely watched by the staff, and likely by all NRC ALJs and the nuclear industry, to see whether political influence is at work here. Fair or not, this will become part of how their professional and personal character will be judged. Many of us believe that the perception of bias is so strong that each of these commissioners should recues themselves for this reason.

Finally, because OGC reports to the Commission, and not the EDO, there is a question of the independence of the advice regarding this appeal, as opposed to building the best case to support the Commission's preferred decision.

The staff is invested in the culture of the NRC and takes pride in its tradition and high standards. If the commissioners do not recues themselves and do vote against the ASLB, I hope that I am shown to be wrong about our concerns because of the sound justification upon which the decision is based. I think that all of want to believe the Commission is doing the right thing, and are willing to give it the benefit of the doubt. To think otherwise would be devastating.

Respectfully,  
Stan Echols