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.

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.