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AUTHOR: REP Fred Upton

AFFILIATION: CONG

ADDRESSEE: Gregory Jaczko

SUBJECT: Concerns investigation of the decision-making process related to the pending license application for construction of a high-level waste repository at Yucca Mountain

ACTION: Signature of Chairman

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LETTER DATE: 03/31/2011

ACKNOWLEDGED No

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NOTES:

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DATE DUE: 04/21/2011

DATE SIGNED:

FRED UFTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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

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

March 31, 2011

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

Dear Chairman Jaczko:

We write to notify you that the Committee on Energy and Commerce and its Subcommittee on Environment and the Economy are investigating the decision-making process related to the pending license application for construction of a high-level waste repository at Yucca Mountain.

At this time, we have questions about certain actions undertaken by you and the Nuclear Regulatory Commission (NRC or Commission) relating to (a) the proposed withdrawal of the license application for authorization to construct a repository at Yucca Mountain currently pending before the NRC; and (b) the defunding and termination of NRC's licensing proceedings of the Yucca Mountain repository license application (including staff technical and safety reviews) at a time when the full Commission has yet to decide the issue or authorize the defunding. We seek information necessary to evaluate the NRC's adherence to its statutory obligations and responsibilities under the Nuclear Waste Policy Act of 1982, as amended. We also seek information necessary to assess whether decisions were made according to NRC procedures and with full information and consideration of the policy, legal, and budgetary impacts of those decisions.

Accordingly, pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, we respectfully ask that you provide written responses to the following within two weeks of the date of this letter. We also ask that you follow the instructions for responding to the Committee's document requests, included as an attachment to this letter. The relevant time period for the following requests is January 1, 2009, to the present.

1. Please provide a detailed chronological description of all NRC actions and decisions relating to the Yucca Mountain construction license application, including, but not

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limited to, actions and decisions by the NRC Chairman, the Commission, and the Construction Authorization Board (CAB).

2. Please explain your role in the Administration's decisions concerning the Yucca Mountain license application, including, but not limited to, decisions to begin the closure of Yucca Mountain and to terminate the NRC technical and adjudicatory review of the license application for constructing a repository at Yucca Mountain.
 - a. List the names, titles, offices and roles of individuals, including those within the Office of the Chairman, who participated in deliberations regarding planning, actions, or decisions relating to the Yucca Mountain license application.
 - b. Please provide a list of all meetings and communications that have occurred between the NRC Chairman and the Executive Office of the President or Department of Energy (DOE), including Secretary of Energy Steven Chu, relating to constructing a repository at Yucca Mountain. Please include the dates of all such meetings and communications, the individuals present and a description of the subject matters discussed, and state whether the Commissioners or NRC staff were informed of each such meeting.
 - c. Provide all documents relating to any such meetings or communications.
3. Provide all documents relating to: (a) the development of the proposed FY 2010 budget for license support activities related to the Yucca Mountain license application, (b) any agreement by the Commission about the conditions necessary for terminating the various NRC license review activities, and (c) the decision to terminate Yucca Mountain license review activities in conjunction with FY 2011 Continuing Resolution funding.
4. Provide all documents relating to the April 23, 2010 Commission Memorandum and Order (CLI-190-13) (which vacated the CAB's decision to suspend consideration of DOE's motion to withdraw the license application and ordered the CAB to issue a decision no later than June 1, 2010). This request includes, but is not limited to, all staff memoranda and evaluations.
5. Please describe the specific Commission procedures followed in voting on the appeal (pending before the NRC) of the CAB's decision to deny the motion to withdraw the license application for a repository at Yucca Mountain, including, but not limited to, the dates of each action, vote, and any affirmation of the votes.
 - a. Explain the failure to complete action upon the appeal.
 - b. Provide all documents relating to the scheduling and resolution of the Commission's votes concerning the review of the CAB decision to deny DOE's motion to withdraw its Yucca Mountain license application.
6. Please explain the justification and legal authority for your decision, as NRC Chairman, to direct Commission staff to terminate review of the Yucca Mountain application.
 - a. Provide all documents relating to the direction to cease review of the Yucca Mountain application, including, but not limited to, the memoranda and analyses relating to the justification for the decision or authority to terminate review of the Yucca Mountain application.

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- b. Provide all documents relating to the drafting and finalization of the staff Safety Evaluation Reports (SERs) of the Yucca Mountain license application, including, but not limited to, the Safety Evaluation Report Volumes 1 and 3.
7. Has NRC been using the Nuclear Waste Fund (NWF) to fund actions relating to the termination of the NRC's license review?
 - a. If so, please explain the basis for using the Nuclear Waste Fund (NWF) to fund actions relating to the termination of the NRC's license review, and state the relevant legal authority upon which you relied to spend sums from the NWF.
 - b. Provide all documents relating to the use of NWF for termination of license review, including, but not limited to, all assessments of the funding necessary to terminate activities and preserve all information captured in the NRC review process.

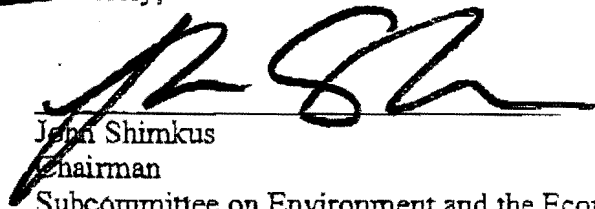
The term "NRC" refers to the U.S. Nuclear Regulatory Commission and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the NRC. Should you have any questions, you may contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

We appreciate your prompt attention to this request.

Sincerely,



Fred Upton
Chairman



John Shimkus
Chairman

Subcommittee on Environment and the Economy

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

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

The Honorable Kristine L. Svinicki

The Honorable George Apostolakis

The Honorable William D. Magwood, IV

The Honorable William C. Ostendorff

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

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

INSTRUCTIONS

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

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

For government recipients:

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