



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

COMMISSIONER

February 25, 2011

The Honorable Ralph M. Hall
Chairman, House Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Hall:

I am writing in response to your letter of February 10, 2011, regarding release of Volume 3 ("Review of Repository Safety after Permanent Closure") of the "Safety Evaluation Report (SER) Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada" and the status of U.S. Nuclear Regulatory Commission (NRC) activities related thereto. Thank you for soliciting my individual views, as a member of the Commission.

As I outlined to Congressman Hastings in a November 1, 2010 letter (enclosed), subsequent to the decision by NRC Chairman Gregory Jaczko to direct the closure of NRC's High-Level Waste program, Commissioner William Ostendorff formally proposed that the Commission revisit the Chairman's direction, and establish a new direction to explicitly instruct the NRC staff to continue towards its scheduled release of Volume 3 of the Yucca Mountain SER. I voted in support of this proposal; however, the remainder of the Commission declined to participate in the matter, depriving the proposal of a quorum needed for action. In my vote, I stated 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."

I continue to hold my previously-stated views. As an individual Commissioner, however, I currently have no access to, or authority over, Volume 3 of the SER. There has been no majority, to this point, to overturn the current plan to shut down the program. The Commission continues internal deliberations related to the NRC staff's High-Level Waste program activities. As an example, I am enclosing an excerpt from the transcript of the October 18, 2010 NRC All-Hands Meeting, which touches on this issue.

My understanding of these plans and the current status of remaining SER volumes is, as follows. Since ceasing its safety review of the Yucca Mountain license application on October 1, 2010, the NRC staff has been converting the remaining SER volumes (Volume 3: Review of the Repository Safety after Permanent Closure, Volume 2: Review of Repository Safety before Permanent Closure, and Volume 4: Review of Administrative and Programmatic Requirements) into technical evaluation reports. This conversion involves the removal of any staff findings of regulatory compliance from the SER volumes. The resulting technical evaluation reports are intended to be made publicly available by the NRC as knowledge management tools. Also, in response to a request under the Freedom of Information Act, the staff made available redacted copies of Volumes 2 and 3 of the SER in the NRC's Publicly Available Record System. In a related action, on February 25, 2011, the Atomic Safety and Licensing Board issued an order

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(also enclosed) in the high-level waste licensing adjudicatory proceeding, directing the NRC staff to show cause why the staff should not be ordered to place, in unredacted form except for classified and safeguards information, Volume 3 of the SER in its Licensing Support Network document collection as circulated draft documentary material.

I respectfully acknowledge that differences of opinion exist among policy makers, and the public, regarding the Nation's nuclear waste program. These matters will be addressed in appropriate venues, as they should. As a personal view, however, I agree with the statement of Dr. John P. Holdren, the Director of the Office of Science and Technology Policy, in his memorandum on the subject of scientific integrity, where he states, "Open communication among scientists and engineers, and between these experts and the public, accelerates scientific and technological advancement, strengthens the economy, educates the Nation, and enhances democracy." I am committed to working with my colleagues on the Commission to advance this principle.

Respectfully,



Kristine L. Svinicki

Enclosures: as stated

Identical Letters Sent to the following Congressmen:

The Honorable F. James Sensenbrenner, Jr.
Vice-Chairman
House Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515

The Honorable Paul Broun, M.D.
Chairman, Subcommittee on
Investigations and Oversight
House Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515

The Honorable Andy Harris
Chairman, Subcommittee on
Energy and Environment
House Committee on Science,
Space, and Technology
United States House of Representatives
Washington, D.C. 20515



COMMISSIONER

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

November 1, 2010

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

Dear Congressman Hastings:

I write in response to your letter of October 21, 2010, regarding Volume III of NRC's Yucca Mountain Safety Evaluation Report (SER).

As you are aware, subsequent to the decision by NRC Chairman Gregory Jaczko to direct the orderly closure of NRC's High Level Waste program, Commissioner William Ostendorff formally proposed that the Commission revisit the Chairman's direction, including the issuance of explicit Commission direction to the NRC staff that it continue towards its release of Volume III of the Yucca Mountain SER.

Although a majority of Commissioners declined to participate, denying a quorum required for action on his proposal, I voted in support of Commissioner Ostendorff's request. A copy of my vote is enclosed with this letter. In it, I state 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."

I do not have access to Volume III of the SER, and would receive it upon its public release, but I understand that your request to be provided a copy of it has been referred to the NRC's Office of Congressional Affairs. I thank you for the opportunity to provide my individual view in this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "Kristine L. Svinicki".

Kristine L. Svinicki

Enclosure:
Vote for COMWCO-10-0002

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

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 ALL-HANDS MEETING

5 + + + + +

6 MONDAY

7 OCTOBER 18, 2010

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9 ROCKVILLE, MARYLAND

10
11 The Commission met in the Grand Ballroom of the
12 Marriott Bethesda North Conference Center, 5701 Marinelli Road,
13 Rockville, Maryland, at 1:30 p.m., Gregory B. Jaczko, Chairman, presiding.

14
15 COMMISSIONERS PRESENT

16 GREGORY B. JACZKO, Chairman

17 KRISTINE L. SVINICKI, Commissioner

18 GEORGE APOSTOLAKIS, Commissioner

19 WILLIAM D. MAGWOOD, IV, Commissioner

20 WILLIAM C. OSTENDORFF, Commissioner

21
22 ALSO PRESENT

23 BILL BORCHARDT, NRC

24 DALE YEILDING, NTEU

25
26
27 PROCEEDINGS

1 COMMISSIONER MAGWOOD: Well, there's several
2 options, and there's actually some initiative that is underway at the
3 Department of Energy to provide grants to look for solutions. Right now,
4 there's a combination of things that are going on, including trying to
5 convert some of the existing research reactors at universities to produce
6 medical isotopes, but there are also industry initiatives underway to
7 develop new reactor-based technologies, and actually some non-reactor
8 technologies to develop, particularly, molybdenum-99. But all these things
9 are still in the pipeline. There's nothing that really solves the problem in
10 the near term.

11 That said, I think that it's something that has finally
12 reached -- gained the kind of attention nationally that it's deserved for a
13 long time. For some of us who were involved in this years ago, it was
14 always very frustrating that we were sort of voices in the dark saying
15 there's a big problem coming down the line here. But now I think it's got a
16 lot of attention. There's resources, so, hopefully, as we go forward in the
17 next several years, there'll be some solutions, as well.

18 **AUDIENCE PARTICIPANT:** Thank you. For more than a
19 decade, previous Commissions have provided resources and supported
20 the High-Level Waste program as it developed and elaborated a Public
21 Outreach program to interact with stakeholders. And key to that effort was
22 to communicate a message that NRC was an open, and transparent, and
23 independent regulator. And, as part of that, a key message was that the
24 public and stakeholders would have access to the scientific and technical
25 work that staff would do in evaluating a license application for a proposed
26 repository at Yucca Mountain when it was received.

27 I am troubled by the fact that with the recent Commission

1 decision, we are breaking faith with that promise that we made to
2 stakeholders, many of whom are taxpayers and rate payers, who paid for
3 our work, and that they will not have access to the findings, the technical
4 findings that staff has made, and that are ready to be released as Volume
5 III of that work. And I would ask the Commission here today what we
6 should say to those stakeholders, and rate payers, and taxpayers when
7 they ask why can't they have access to that work; understanding that it is
8 not complete, is not part of a final hearing process decision. They
9 understand that, because we spent so much time explaining the hearing
10 process, and explaining what a final decision would have to represent.
11 Thank you.

12 CHAIRMAN JACZKO: Well, I can begin. Of course, if
13 anyone wants to add, feel free.

14 I think as we embark on the effort to look at closing out
15 the program, I think that's an effort that will take some degree of time. I
16 suspect that as we begin to look at the kinds of things that we will make
17 public, and I do believe, as I've talked to many of the staff who work in
18 NMSS, that we should make a lot of information public, and that involves a
19 good degree of the technical information, and the technical review work
20 that the staff has undertaken and completed.

21 I think, my personal views are that there is probably
22 certain information which, at this point, is not complete, and wouldn't be
23 appropriate for publication as part of some kind of information provision, or
24 information document. But, again, I think some of those issues, where that
25 line is, what is exactly the things that shouldn't be provided, and what
26 should be provided, I think that's something that will be more fleshed out in
27 the coming months as the staff begins to look at what, exactly, is entailed

1 in the closeout procedure.

2 So, I think there's -- the bulk of the information will be
3 made public, and I think that's a good thing. I think it's appropriate for
4 people to know the work that we've done as an agency. And I think that
5 that will bear itself out in the future.

6 AUDIENCE PARTICIPANT: When will that be, sir?

7 CHAIRMAN JACZKO: I'm sorry? When?

8 AUDIENCE PARTICIPANT: When will that be, sir?

9 CHAIRMAN JACZKO: Well, I think over the next couple
10 of months we'll be looking at putting together a time line for all the work
11 that needs to be done to do the closeout.

12 AUDIENCE PARTICIPANT: Thank you.

13 COMMISSIONER SVINICKI: I would just add to what the
14 Chairman has commented on, that my view was different in my vote in
15 support of Commissioner Ostendorff's COM. I indicated my personal view
16 that the best way to memorialize the staff's work would be to publish
17 Volume III of the SER with the findings, so I -- it's my hope that as the
18 Commission looks more closely at the staff's recommendation on the
19 appropriate scope of closeout activities, as the Chairman has mentioned, I
20 hope that we'll continue to analyze this particular question. That's my
21 personal view.

22 AUDIENCE PARTICIPANT: In your opinion, what is the
23 biggest non-technical threat to the nuclear renaissance, some examples
24 being politics, economy, and workforce issues.

25 CHAIRMAN JACZKO: Well, I'll share my opinion first.
26 Then, of course, any others like to chime in. And, again, these questions
27 are always difficult, because it's very tempting to want to get in the middle

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

February 25, 2011

ORDER

(Directing NRC Staff's Show Cause)

On February 17, 2011, the NRC Staff filed a notification stating that, on that same date in response to a Freedom of Information Act request, it had "made available redacted copies of preliminary drafts of Volumes 2 and 3 of the SER."¹ Previously, the Staff notified the Board on the penultimate day of the Staff's schedule for issuing Volume 3 of the SER, that it would not meet its longstanding schedule and on December 8, 2010, the Board directed the Staff to provide an explanation of its last minute schedule change.²

Nothing in the Staff's December 22, 2010 purported explanation for its last minute schedule change, or in the various documents the Staff quotes and cites therein, sheds light on how SER Volume 3, on the day before it was long scheduled to be issued, comports with the Staff's characterization of SER Volume 3 being a preliminary draft. Accordingly, the Staff shall, by March 3, 2011, show cause why the Staff should not be ordered to place, in unredacted form

¹ NRC Staff Notification of Disclosure Pursuant to Freedom of Information Act (Feb. 17, 2011).

² See CAB Order (Addressing Nevada's Motion and Discovery Status) (Dec. 8, 2010) at 2 (unpublished). In that order, the Board noted that

the Staff had informed the Board at the January 27, 2010 case management conference that the Staff's schedule for issuing SER Volume 3 had slipped from September 2010 to November 2010, a date the Staff confirmed at the June 4, 2010 case management conference. The Staff had initially established the September 2010 issuance date for SER Volume 3 in its July 10, 2009 filing answering Board questions. *Id.* at 1-2 (internal citations omitted).

except for classified and safeguards information, Volume 3 of the SER in its LSN document collection as circulated draft documentary material in accordance with 10 C.F.R. § 2.1001 and its continuing obligation to "make a diligent good faith effort to include all after-created . . . documents as promptly as possible in each monthly supplementation of documentary material."³

It is so ORDERED:

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 25, 2011

³ Revised Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 6, 2007) at 21 (unpublished). See CAB Case Management Order #1 (Jan. 29, 2009) at 2 (unpublished).