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

COMMISSIONER

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,

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