



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

July 22, 2011

The Honorable Fred Upton  
Chairman, Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your July 8, 2011 letter. In that letter you requested information concerning the development of a "reversible" Volume III of the Safety Evaluation Report (SER) for the Yucca Mountain application. As you know, documents relating to the drafting and finalization of SER Volume III have already been provided in response to your letter of March 31, 2011. The additional documents relating to your request and responsive to items 1, 2, and 3 in your July 8, 2011, letter, are enclosed. Many of these documents have not been made available to the public. I respectfully request that the Committee not release them.

Some of the statements in the letter are based on a factual misunderstanding. Unfortunately, the technical staff's testimony before the committee on June 24 created some confusion about the status of Volume III of the SER. It is incorrect to say that the SER was complete by late 2010, including the Office of the General Counsel's (OGC) no legal objection.

The facts are that on July 15, 2010, a draft version of SER, Volume III was provided to Catherine Haney, Director of the Office of Nuclear Material Safety and Safeguards for her review. Ms. Haney neither completed this review nor concurred on the document. While the staff continued to review and revise portions of the draft through September 2010, it was not completed.

In October 2010, staff was directed to develop a Technical Evaluation Report (TER) capturing the knowledge acquired during the review of the Yucca Mountain application. In carrying out that direction, some staff members apparently began working on what they referred to, during the June 24<sup>th</sup> hearing, as a 'reversible SER' document. Such a term or product does not exist in NRC statutes, regulations, or practice, and neither I nor the senior program managers responsible for providing information to the Commission on high-level waste activities were aware until testimony at the June 24<sup>th</sup> Energy and Commerce Committee hearing that such a document was under development. The clear and consistent direction given to staff has been to stop working on the licensing documents and devote their effort to thoroughly documenting the work they did in a Technical Evaluation Report (TER). The TER was released publicly on July 21, 2011.

These events occurred during a period of heightened external political pressure on the agency regarding the future of Yucca Mountain. I share your concern about the appearance of agency actions when this type of political pressure exists. I affirm that none of my actions were based on political influence and the NRC Inspector General's comprehensive investigation confirmed that.

I understand that you have questions about whether my office identified all responsive documents to your March 31, 2011, request. The documents provided by my office were located after completing a reasonable, diligent search. But, if others have provided you with additional documents we were not able to identify, please feel free to provide me with specifics and we will conduct additional searches.

The material that I provided to you in redacted form consisted of material prepared by my staff for my periodic one-on-one meetings with my fellow Commissioners. These meetings serve a very important opportunity for me to discuss policy issues with them. The portions I redacted either did not pertain to Yucca Mountain and therefore fell outside the scope of the Committee's investigation or related to adjudicatory discussions.

With respect to question number 4, I have not used a personal e-mail account to send or receive e-mails relating to the Yucca Mountain project. My staff uses their government e-mail accounts for the conduct of agency business.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. B. Jaczko', with a long horizontal line extending to the right.

Gregory B. Jaczko

Enclosures: As stated

cc: Rep. Henry Waxman