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

CHAIRMAN

April 28, 2011

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

Dear Mr. Chairman:

I am writing in response to your March 10, 2011, letter requesting an unredacted copy of the draft Volume III of the Safety Evaluation Report (SER) for the Yucca Mountain application. As I explained when I informed you of the public release of a redacted version, in my letter of March 4, 2011, the SER volume had not been through final agency review. Therefore, the findings and conclusions in the document are preliminary. The redacted portions represented the predecisional findings and conclusions we normally protect from public release consistent with the Freedom of Information Act.

Since that time, the Commission has received additional Congressional requests for the unredacted copy of the draft SER Volume III. In response, I have reiterated my belief that public release of preliminary staff findings and conclusions establishes a dangerous agency precedent. The staff's preliminary findings may turn out to be incorrect or incomplete. As such, they can mislead or confuse the public. Even my colleagues and I have not had access to the redacted portions of SER Volume III. As the appellate body for the agency, the Commission does not have access to predecisional, non-public information regarding the staff's substantive review of the Yucca Mountain application.

Notwithstanding my reservations, a majority of the Commission is willing to provide unredacted copies in response to Congressional Committee requests provided that they are held in confidence. I have accordingly directed our Office of Congressional Affairs to provide you with an unredacted copy today. I do so with the request that you and your staff will respect the potential adverse impact of public release and safeguard this information accordingly.

Regarding your specific questions about the close out of our Yucca Mountain support activities and SER Volume III, my responses are provided below:

1) Is your decision to bring the HLW program to a close the only hindrance to timely review of SER Volume III? If not, please identify and explain the other barriers to timely review?

The transition to close out of Yucca Mountain licensing support activities prompted a number of agency initiatives, including the development of a technical evaluation report (TER) to document and preserve all of the staff's review conducted to date. This is distinguished from the SER, which would set forth the staff's regulatory findings that are subject to review by the Licensing Board in the hearing and the Commission on appeal. Since the TER will serve as the final agency documentation on the Yucca Mountain license application, further review activities to support the SER were no longer necessary.

2) What work was undertaken on SER Volume III between its delivery to the Director of the Office Nuclear Materials Safety and Safeguards in July 2010 and October 2010, when you unilaterally halted work on the HLW program?

As discussed above, because of the Commission's role as the appellate body for the agency, I have no specific knowledge of the technical work conducted by the staff during that time.

3) Please explain your reasoning behind your refusal to participate in Commissioner Ostendorff's proposal for the full Commission to consider your October decision to halt work on the HLW program?

My decision not to participate on the proposal was based on my judgment that it did not raise a policy matter warranting Commission action. Since a majority of the Commission did not participate in this matter, the proposal was rejected.

4) What specific communication did you or your staff have with NRC Staff relating to the schedule, review or approval of SER Volume III?

On June 11, 2010, I issued a memorandum directing the staff to stay on the established review schedule, which is attached. I also met with the staff of the Division of High Level Waste in the Office of Nuclear Materials Safety and Safeguard (NMSS) on June 24, 2009 and October 12, 2010, to discuss developments related to the future of the Yucca Mountain program.

5) What ongoing reviews of the draft SER Volume III were in progress at the time of the NRC Staff Notification Regarding SER Schedule on November 29, 2010 as described in the Staff's March 3, 2011 reply to the Board?

During that time, the staff transitioned from licensing support activities, including development of an SER, to close out activities.

6) In October, you noted "No specific actions have yet been taken to terminate the program." Since then, what specific actions have been taken or will be taken to terminate review of the license application, including all actions related to Staff review of the application?

As explained in my response to an earlier letter on the matter (attached), at the beginning of the new fiscal year, the staff began the process of transitioning to close-out of the Yucca Mountain program consistent with Commission policy, the general principles of appropriation law, and applicable guidance from the Office of Management and Budget and the Government Accountability office on expenditure of funds under continuing resolutions. At that time, the staff began the process of documenting and preserving the staff's review, including the development of a technical evaluation report (TER). The agency will continue and conclude these close-out activities consistent with the recently enacted Fiscal Year 2011 appropriations law.

You have also asked for documents and communications relating to the completion and release of SER Volume III. The Commission is currently identifying documents related to these matters. I understand that the Office of Congressional Affairs and your staff have regular discussions and will continue to update you on our progress on your document requests.

I appreciate your continuing interest in these matters and would be happy to discuss them with your directly, either by phone or in person as your schedule allows. Because neither I nor my fellow Commissioners have access to SER Volume III in unredacted form, I cannot discuss any the staff's preliminary findings or conclusions in the draft SER. Should you have any additional questions on the agency's processing of the document, however, please let me know.

Sincerely,

Gregory B. Jaczko

cc: Representative Eddie Bernice Johnson