

**THE COMMITTEE ON ENERGY AND COMMERCE**  
**INTERNAL MEMORANDUM**



June 9, 2011

**MEMORANDUM**

To: Members, Subcommittee on Environment and the Economy

From: Majority Staff

Subject: Hearing Entitled: “The NRC Inspector General Report on the ‘NRC Chairman’s Unilateral Decision to Terminate NRC’s Review of the DOE Yucca Mountain Repository License Application’”

On Tuesday, June 14, 2011, at 10:00 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Environment and the Economy will conduct a hearing entitled: “The NRC Inspector General Report on the ‘NRC Chairman’s Unilateral Decision to Terminate NRC’s Review of the DOE Yucca Mountain Repository License Application’.” The hearing will focus on what appears to have been a dramatic breakdown in the statutorily required processes of the Nuclear Regulatory Commission (NRC) and the legitimacy of the Commission’s work.

**I. Witnesses**

The Honorable Hubert T. Bell, Inspector General, Nuclear Regulatory Commission, accompanied by Mr. Joseph McMillan, Assistant Inspector General for Investigations, and Ms. Rossana Raspa, Senior Level Assistant for Investigative Operations.

**II. Background**

In 1987, after the Department of Energy (DOE) conducted studies of nine potential sites, Congress selected the Yucca Mountain site in Nevada as the only site for further study for the first national spent nuclear fuel repository.

In 2002, following extensive evaluation of the site by DOE and its national laboratories, the Secretary of Energy determined that Yucca Mountain was suitable for repository development and recommended the President approve the site for development. Under the Nuclear Waste Policy Act (NWPA), Nevada submitted a notice of disapproval, but Congress and the President overturned it in Public Law 107-200, reaffirming selection of Yucca Mountain as the site for the repository. On June 3, 2008, DOE submitted to NRC a license application to construct the Yucca Mountain repository.

Since 1983, the NWPA has authorized collection of one tenth of a cent per kilowatt-hour of electricity generated by commercial nuclear plants to be paid into the Nuclear Waste Fund for the purpose of developing and operating a permanent away-from-reactor repository for spent nuclear fuel. An additional \$5 billion has been paid in by taxpayers because the federal government will store high-level waste in the repository. So far, approximately \$10 billion has been drawn from the Waste Fund by DOE for development of the repository.

Meanwhile, as DOE has fallen behind its statutory and contractual schedules for accepting spent fuel from commercial power plants, the plant operators have been making and collecting claims for damages. According to the Government Accountability Office (GAO), total U.S. taxpayer liability for DOE failure to take title to spent fuel is estimated at \$15.4 billion, currently, and estimated to increase by \$500 million per year for each year beyond 2020 that a repository is not operating.

### **III. Role of the Nuclear Regulatory Commission**

Citing then-recent news reports that NRC Chairman Gregory Jaczko had been delaying a ruling on whether the DOE has authority to withdraw its application for a license to construct the Yucca Mountain repository, Representatives Upton and Whitfield wrote the NRC Inspector General (IG) on October 19, 2010, requesting a “fair and expedited review of the Chairman’s actions in this situation.” The resulting report from the IG, dated June 6, 2011, is the subject of this hearing.

The NWPA gives the NRC four years to review the Department of Energy license application to construct the repository at Yucca Mountain.<sup>i</sup> DOE docketed the DOE application in September 2008. The NRC then commenced a two-pronged review of the application: (1) a technical licensing review by the NRC staff to assess the technical merits of the repository design and formulate a position on whether to issue a construction authorization for the repository and (2) adjudicatory hearings by the NRC’s Construction Authorization Board to consider technical and legal challenges to the application. The Commission, based on a staff Safety Evaluation Report and the Board hearings, is to determine solely on the technical merits whether to authorize construction of the repository.

In March 2010, DOE filed a motion with the NRC’s Construction Authorization Board to withdraw the license application. On June 29, 2010, the Board denied the DOE motion to withdraw the application.<sup>ii</sup>

Nearly one year later, the full Commission has yet to finalize its review of the Board decision. In October 2010, however, the NRC staff, directed by Chairman Jaczko, began to terminate DOE license review activities.

The collegial Commission is responsible for policy formation, rulemaking, adjudications, and adjudicatory orders.<sup>iii</sup> The Energy Reorganization Act of 1974 provides that

Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the

Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote.<sup>iv</sup>

The Inspector General's June 6 Report indicates that the intra-Commission information sharing and decision-making provided for in the NRC's organic statute<sup>v</sup> has not characterized handling of the DOE license application since at least 2010. The Inspector General paints a complex picture of Commissioners and senior NRC staff being misled by Chairman Jaczko, of critical information for Commission decision-making being withheld from Commissioners, and of matters ripe or overdue for full Commission action being blocked from resolution.

#### **IV. Issues**

Issues to be examined at the hearing shall include:

- The legal duties of the NRC Chairman to ensure complete information access for his fellow Commissioners
- The integrity of the Commission process, when it may be compromised by:
  - uneven access to information by all Commissioners;
  - failure to schedule timely consideration of matters that are ripe for Commission resolution; and,
  - failure of the Commission to adhere to its own written procedures that draw on its organic statutes.

#### **V. The IG Report**

The NRC Inspector General's June 6 Report that is the subject of the June 14 hearing is attached.

#### **VI. Staff Contacts**

If you have any questions regarding this hearing, please contact David McCarthy or Peter Spencer of the Majority Committee staff at (202) 225-2927.

#### **Attachment**

---

<sup>i</sup> Nuclear Waste Policy Act as amended, Sec. 114(d).

<sup>ii</sup> IG Report, pg. 6, June 6, 2011.

<sup>iii</sup> Reorganization Plan No. 1 of 1980, Section 1(a), P.L. 98-614.

<sup>iv</sup> 42 U.S.C. 5841.

<sup>v</sup> *Id.*