

Paul R. LePage, Governor

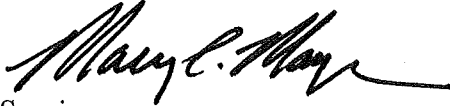
Mary C. Mayhew, Commissioner

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August 27, 2012

MEMORANDUM

TO: Senator Kevin Raye, President of the Senate, and Representative Robert Nutting, Speaker of the House

FROM: Mary Mayhew, Commissioner 
Department of Health and Human Services

SUBJECT: State Nuclear Safety Inspector's May 2012 Monthly Report to the Legislature on the Interim Spent Fuel Storage Facility in Wiscasset, Maine

Legislation enacted in the spring of 2008 requires the State Nuclear Safety Inspector to provide monthly reports to the President of the Senate, Speaker of the House, the U.S. Nuclear Regulatory Commission, and Maine Yankee. The report focuses on activities at the site and includes highlights of the national debate on storing and disposing the used nuclear fuel.

The enclosed report provides the information required under Title 22 of the Maine Revised Statutes Annotated §666, as enacted under Public Law, Chapter 539, in the second regular session of the 123rd Legislature.

Should you have questions about its content, please feel free to contact Mr. Patrick J. Dostie, State Nuclear Safety Inspector, at 287-6721.

pjd

Enclosure

cc: Mark Lombard, U.S. Nuclear Regulatory Commission
Monica Orendi, U.S. Nuclear Regulatory Commission, Region I
James Connell, Site Vice President, Maine Yankee
Katrin Teel, Senior Policy Advisor, Governor's Office
Sheila Pinette, DO, Director, Maine Center for Disease Control and Prevention
Patricia W. Aho, Commissioner, Department of Environmental Protection
Richard Davies, Maine Public Advocate
Lieutenant Anna Love, Special Services Unit, Maine State Police
Nancy Beardsley, Director, Division of Environmental Health
Jay Hyland, PE, Manager, Radiation Control Program

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State Nuclear Safety Inspector Office
Maine CDC – DHHS

May 2012 Monthly Report to the Legislature

Executive Summary

As part of the State's long standing oversight of Maine Yankee's nuclear activities, legislation was enacted in the second regular session of the 123rd and signed by Governor John Baldacci requiring that the State Nuclear Safety Inspector prepare a monthly report on the oversight activities performed at the Maine Yankee Independent Spent Fuel Storage Installation facility located in Wiscasset, Maine.

The report covers activities at the storage facility, including the State's on-going environmental radiation surveillance and the national debate over the licensing and construction of a geologic repository for the disposal of spent nuclear fuel at Yucca Mountain in Nevada. The report's highlights assist readers to focus on the significant activities that took place during the month, both locally and nationally.

LOCAL:

- Maine Yankee held its annual fire and medical drill. The scenario involved a worker performing maintenance on the skid steer, a small front end loader, in the truck bay of the Security and Operations Building. The skid steer caught on fire near a flammables storage cabinet. The Wiscasset Fire Department, Westport Island Fire Department, Wiscasset Ambulance Service and the Wiscasset Police Department responded. The maintenance worker suffered minor burns, smoke inhalation, and was unaccounted for. The victim was not transported offsite, but how he would be treated and where he would be transported to were discussed.

The national highlights primarily focused on federal court actions and Congressional activities as noted below:

National:

- The U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments on why the Court should force the Nuclear Regulatory Commission (NRC) to complete its licensing review of the Department of Energy's Yucca Mountain license application. In its briefs the NRC had cited a lack of funds besides budgetary limitations imposed by Congress in suspending its consideration of the Yucca Mountain Project. However, at the hearing the Court was appraised that the NRC's still had \$10.4 million in unspent funds for the Yucca Mountain licensing review. After hearing oral arguments the Court of Appeals for the D.C. Circuit issued an Order inviting the Department of Justice (DOJ) to file a brief by June 1st expressing its views as to whether the Court should order the NRC to reopen its suspended licensing proceedings on the Department of Energy's Yucca Mountain license application.
- The Northeast High-Level Radioactive Waste Transportation Project was notified by the Department of Energy that it had received a four year, \$900,000 grant to work on the Nuclear Waste Policy Act transportation provisions and related areas of the Blue Ribbon Commission's (BRC) Report recommendations. The Energy Department grant was in response to one of the BRC's recommendations to resume funding for state and regional groups to continue their transportation and

infrastructure assessment efforts. Those efforts abruptly terminated when the Administration ceased its funding for the Yucca Mountain repository in Nevada.

- The Department of Justice filed with the U.S. Court of Appeals for the D.C. Circuit a motion for a 21 day extension in which to file its response to the May 2nd Court Order on the mandamus case that would force the Nuclear Regulatory Commission to resume its licensing proceedings on the Yucca Mountain Project. The motion provided justification for the extension. On the same day the petitioners in the mandamus case against the federal government filed with the D.C. Circuit its opposition to the 21 day extension.
- Senators Olympia Snowe, Susan Collins, Herb Kohl from Wisconsin and Scott Brown from Massachusetts sent a letter to Energy Secretary Chu requesting that Dr. Chu move promptly on the Blue Ribbon Commission's recommendations for decommissioned reactors, namely the establishment of at least one consolidated interim storage site for used nuclear fuel with decommissioned sites receiving first priority for shipping their spent fuel. The letter raised the concern of the transportation readiness of these sites and the necessary infrastructure to support the rail movements. The letter thanked the Department of Energy for restoring funding to regional transportation groups who are intimately involved in infrastructure assessments of short lines at decommissioned sites.
- The U.S. Court of Appeals for the Federal Circuit upheld an earlier U. S. Federal Court of Claims' decision to award the three Yankee Companies (Yankee Atomic in Massachusetts, Connecticut Yankee and Maine Yankee) \$142 million in damages for the federal government's breach of agreements to take possession of the spent nuclear fuel starting in 1998. In addition, the Appeals Court reversed an earlier ruling by the Claims Court that disallowed Yankee Atomic's wet pool costs for the years 2000 and 2001. The reversal raised Yankee Atomic's initial award from \$32 million to \$49 million.
- Representative John Shimkus from Illinois introduced an amendment to H.R. 5325, the House's appropriations bill for Fiscal Year 2013. The amendment would provide \$10 million for the Nuclear Regulatory Commission to complete its assessment of whether or not the Yucca Mountain site is a safe repository. The \$10 million would come from the Department of Energy's administrative account.

Introduction

As part of the Department of Health and Human Services' responsibility under Title 22, Maine Revised Statutes Annotated (MRSA) §666 (2), as enacted under Public Law, Chapter 539 in the second regular session of the 123rd Legislature, the foregoing is the monthly report from the State Nuclear Safety Inspector.

The State Inspector's individual activities for the past month are highlighted under certain broad categories, as illustrated below. Since some activities are periodic and on-going, there may be some months when very little will be reported under that category. It is recommended for reviewers to examine previous reports to ensure connectivity with the information presented as it would be cumbersome to continuously repeat prior information in every report. Past reports are available from the Radiation Control Program's web site at the following link: www.maineradiationcontrol.org and by clicking on the nuclear safety link in the left hand margin.

Commencing with the January 2010 report the glossary and the historical perspective addendum are no longer included in the report. Instead, this information is available at the Radiation Control Program's website noted above. In some situations the footnotes may include some basic information and may redirect the reviewer to the website.

Independent Spent Fuel Storage Installation (ISFSI)

During May the general status of the ISFSI was normal, with no instances of spurious alarms due to environmental conditions.

There were two fire-related impairments, one on May 12th and one on May 21st. Both impairments were on one Fire Door. The first impairment lasted three days with the door being repaired and retested satisfactorily. The second impairment is still active with major repairs by a contractor scheduled for June.

There was one security-related impairment for the month and it occurred on May 14th. Since this is security sensitive information it is not available for public disclosure.

There were eight security events logged with four of those events being related to transient camera issues due to environmental conditions. The remaining four events were related to the security impairment and therefore not available for public disclosure.

There were eighteen condition reports¹ (CR) for the month of May and they are described below.

1st CR: Documented the removal from training material references to a specific contractor.

2nd CR: Was written to document the entrance into a radiation area without dosimetry. The individual's access was restricted until such time a dosimetry evaluation was performed.

3rd CR: Documented a security-related equipment issue. The unit was repaired.

4th CR: Documented problems associated with the fire door.

5th CR: Documented discrepancies noted in the spill equipment inventory log. All issues were corrected.

6th CR: Documented problems with a fire door closing and latching.

¹ A condition report is a report that promptly alerts management to potential conditions that may be adverse to quality or safety. For more information, refer to the glossary on the Radiation Program's website.

- 7th CR: Documented water in leakage problems with two cabinets used for the Cask Temperature Monitoring System.
- 8th CR: Was written to document the missing training information for two individuals. Both individuals were immediately retrained and documentation provided.
- 9th CR: Documented a book index not being properly updated after reviews were closed out.
- 10th CR: Documented that several high range dosimeters were beyond their calibration date when inventoried. They were immediately replaced.
- 11th CR: Documented that the emergency plan equipment inventory procedure did not list the high range dosimeters.
- 12th CR: Documented the finding of deteriorated personnel protection equipment. The equipment was immediately removed from service.
- 13th CR: Documented an issue with the control and posting of radioactive material.
- 14th CR: Documented a wildlife incident while mowing with a tractor. The animal was removed from the site for rehabilitation with the aid of a Game Warden.
- 15th CR: Documented the finding of an outdated procedure revision in one of the emergency plan implementing procedure books. The issue was immediately corrected.
- 16th CR: Was written to document that the on-the-job training guides were not in accordance with procedural guidance. The issue was immediately corrected.
- 17th CR: Was written to track improvement items from the combined fire and medical drill.
- 18th CR: Documented that the bumper strip on the bottom of the entrance gate is not functioning

Other ISFSI Related Activities

1. On May 16th Maine Yankee held its annual fire and medical drill. The scenario involved a worker performing maintenance on the skid steer, a small front loader, in the truck bay of the Security and Operations Building. The skid steer caught on fire near a flammables storage cabinet. The Wiscasset Fire Department, Westport Island Fire Department, Wiscasset Ambulance Service and the Wiscasset Police Department responded. The maintenance worker suffered minor burns, smoke inhalation, and was unaccounted for. The victim was not transported offsite, but how he would be treated and where he would be transported to were discussed.
2. On May 24th Maine Yankee submitted its annual Form 5 to the Nuclear Regulatory Commission. The Form provides information on the annual occupational radiation exposure for each individual being monitored at the storage facility.
3. On May 26th there was an incident with wildlife on the property. A small deer was hit while mowing tall grass on the property. A condition report was written to document the incident and the local Game Warden was notified. The Game Warden removed the injured baby deer from the site for further rehabilitation.
4. On May 29th the State Inspector was contacted by Maine Public Broadcasting Radio to discuss spent fuel management including such topics as the Inspector's oversight role, wet versus dry storage, security, disposal options, transporting spent fuel, and reuse of the used nuclear fuel.

Environmental

There was no new information to report this month.

Other Newsworthy Items

1. On May 2nd the U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments on why the Court should force the Nuclear Regulatory Commission (NRC) to complete its licensing review of the Department of Energy's Yucca Mountain license application. In its briefs the NRC had cited a lack of funds besides budgetary limitations imposed by Congress in suspending its consideration of the Yucca Mountain Project. However, at the hearing the Court was appraised that the NRC's still had \$10.4 million in unspent funds for the Yucca Mountain licensing review. After hearing oral arguments the Court of Appeals for the D.C. Circuit issued an Order inviting the Department of Justice (DOJ) to file a brief by June 1st expressing its views as to whether the Court should order the Nuclear Regulatory Commission (NRC) to reopen its suspended licensing proceedings on the Department of Energy's Yucca Mountain license application. The NRC would be given the opportunity to respond to the DOJ's brief by June 8th with petitioners allowed until June 15th to respond to both briefs. A copy of the Order is attached.
2. On May 3rd the Nuclear Regulatory Commission (NRC) issued for public comment a draft report entitled, "Identification and prioritization of the Technical Information Needs Affecting Potential Regulation of Extended storage and Transportation of Spent Nuclear Fuel". In the 138 page report the NRC staff considered the performance of storage systems over a 300 year period following the discharge of the used nuclear fuel from a reactor. The staff identified the following degradation mechanisms as requiring top priority:
 - Stress corrosion cracking of the stainless steel canister body and welds,
 - The degradation of cask bolts through corrosion, embrittlement, stress corrosion cracking, and mechanical deterioration, and
 - Swelling of fuel pellets due to helium generated inside the pellet, and fuel rod pressurization due to internal mechanisms.
3. On May 4th the Northeast High-Level Radioactive Waste Transportation Project was notified by the Department of Energy that it had received a four year, \$900,000 grant to work on the Nuclear Waste Policy Act transportation provisions and related areas of the Blue Ribbon Commission's (BRC) Report recommendations. The Energy Department grant was in response to one of the BRC's recommendations to resume funding for state and regional groups to continue their transportation and infrastructure assessment efforts. Those efforts were abruptly terminated when the Administration ceased its funding for the Yucca Mountain repository in Nevada.
4. On May 7th the Chair of the House's Committee on Oversight and government Reform sent a letter to Nuclear Regulatory Commission (NRC) Chairman Jaczko requesting clarification on previous testimony he provided at a hearing that was found to be inconsistent with other statements made by fellow Commissioners and NRC staff. The letter listed other examples of Chairman Jaczko's overbearing managerial style. The letter raised the specter of Chairman Jaczko making false statements. A copy of the letter is attached.
5. On May 8th the Nuclear Energy Institute held its annual "Used Fuel Management Conference" in St. Petersburg, Florida. The three conference featured presentations on such topics as cask loading operating experience and lessons learned, regulatory improvements to Certificates of Compliance for casks, security for storage and transportation, assuring the transportability of used fuel, the regulatory aspects of long-term used fuel management, Fukushima-driven requirements for spent fuel safety, spent fuel pool criticality analysis, and technical issues associated with extended storage and transportation. A copy of the agenda is attached.

6. On May 9th the Attorney General's Office of the State of Washington sent a letter to the Clerk for the U.S. Court of Appeals for the DC Circuit providing supporting documentation of at least \$18 million remained in the Department of Energy's funds to support the Nuclear Regulatory Commission's resumption of the Yucca Mountain licensing proceedings. The documentation supported that at least \$18 million was unobligated and available. The Attorney General's letter alluded to the possibility that more funds were available. Copies of the letter and its supporting documentation are attached.
7. On May 15th-17th the Department of Energy held its third annual National Transportation Stakeholders Forum in Knoxville, Tennessee. The State Inspector attended the DOE Forum, which highlighted radioactive materials shipping campaigns, Nuclear Regulatory Commission's (NRC) storage and disposal topics, and emerging technologies for hazardous materials shipments. In addition, the Forum allowed for the four regional state transportation groups to meet and discuss their respective regional issues. The State Inspector provided a report to the Northeast High-Level Radioactive Waste Transportation Task Force on Maine's activities and involvement on spent nuclear fuel. Maine Yankee's Director of Public and Government Affairs also provided a report on their perspective on the Blue Ribbon Commission's recommendations and the efforts necessary to ensure early removal of the used nuclear fuel. Copies of the Forum's and Northeast's agenda are attached.
8. On May 16th the Nuclear Waste Strategy Coalition held a conference call on updating its membership of upcoming congressional appropriation bills in both the House and Senate, and litigation before the Appeals Court on the mandamus case to compel the Nuclear Regulatory Commission to resume its licensing proceedings on the Yucca Mountain project. It was expected that the House would add funding to their appropriation bill to resume the Nuclear Regulatory Commission licensing proceedings on Yucca Mountain. The Senate's appropriations version did not include any funding for Yucca Mountain but did have a provision to establish a pilot program to site, construct and operate consolidated interim storage facilities. Although oral arguments were heard on May 2nd for the mandamus case, a ruling is not expected until the fall. The NWSC is an ad hoc organization of state utility regulators, state attorneys general, consumer advocates, electric utilities and associate members, that includes 40 organizations in more than 30 states. Its primary focus is to protect ratepayer payments into the Nuclear Waste Fund and to support the removal and ultimate disposal of spent nuclear fuel and high-level radioactive waste currently stranded at some 125 commercial, defense, research, and decommissioned sites in 39 states.
9. On May 16th the Department of Justice filed with the U.S. Court of Appeals for the D.C. Circuit a motion for a 21 day extension in which to file its response to the May 2nd Court Order on the mandamus case. The motion provided justification for the extension. On the same day the petitioners in the mandamus case against the federal government filed with the D.C. Circuit its opposition to the 21 day extension.
10. On May 18th Senators Olympia Snowe, Susan Collins, Herb Kohl from Wisconsin and Scott Brown from Massachusetts sent a letter to Energy Secretary Chu requesting that Dr. Chu move promptly on the Blue Ribbon Commission's recommendations for decommissioned reactors, namely the establishment of at least one consolidated interim storage site for used nuclear fuel with decommissioned sites receiving first priority for shipping their spent fuel. The letter raised the concern of the transportation readiness of these sites and the necessary infrastructure to support the rail movements. The letter thanked the Department of Energy for restoring funding to regional transportation groups who are intimately involved in infrastructure assessments of short lines at decommissioned sites. A copy of the letter is attached.

11. On May 18th the U.S. Court of Appeals for the Federal Circuit upheld an earlier U. S. Federal Court of Claims' decision to award the three Yankee Companies (Yankee Atomic in Massachusetts, Connecticut Yankee and Maine Yankee) \$142 million in damages for the federal government's breach of agreements to take possession of the spent nuclear fuel starting in 1998. In addition, the Appeals Court reversed an earlier ruling by the Claims Court that disallowed Yankee Atomic's wet pool costs for the years 2000 and 2001. The reversal raised Yankee Atomic's initial award from \$32 million to \$49 million. Copies of the litigation news, courtesy of Law 360, and the Court's findings are attached.
12. On May 18th The Yankee Companies of Maine Yankee, Connecticut Yankee, and Yankee Atomic in Rowe Massachusetts issued a statement in regards to the favorable U.S. Court of Appeals ruling on the combined lawsuits of the three Yankee companies. The ruling affirmed the Federal Court of Claims award of over \$39 million for Connecticut Yankee, nearly \$82 million for Maine Yankee and actually increased Yankee Atomic's award from \$21 million to \$38 million. Wayne Norton, Chief Nuclear Officer for Maine Yankee urged "the federal government to fulfill its commitment to remove the spent nuclear fuel.....and to stop pursuing a strategy of filing costly appeals that are not beneficial to ratepayers or taxpayers". A copy of the statement is attached.
13. On May 21st Nuclear Regulatory Commission Chairman Jaczko abruptly resigned, making it effective and contingent upon the confirmation of a successor to his chairmanship. A copy of his statement is attached.
14. On May 21st the U.S. Court of Appeals granted a 21 day extension to the Department of Justice to file a brief on the mandamus request to compel the federal government to continue the licensing proceedings associated before the Nuclear Regulatory Commission (NRC). Appropriate time was also set aside for NRC and the petitioners to respond. A copy of the Order is attached.
15. On May 25th the House Committee on Energy and Commerce issued an internal memorandum in preparation for a joint hearing scheduled for May 31st by the Subcommittees on Environment and Economy and Energy and Power. The purpose of the hearing was to focus on Nuclear Regulatory Commission (NRC) policy and governance with all five NRC Commissioners testifying. Besides the Fukushima incident the hearing continues the House's investigation of Chairman Jaczko's management style with his fellow Commissioners and staff as outlined in the White House's December 12th letter response to the House Committee on Oversight and Government Reform. A copy of the memorandum is attached.
16. On May 25th the Agency for Nuclear Projects posted a public meeting notice for the upcoming May 31st Commission on Nuclear Projects' meeting. Updates to the Yucca Mountain program and litigation and legal issues associated with Yucca Mountain were expected. A copy of the agenda is attached.
17. On May 29th the Chair of the National Transportation Stakeholders Forum (NTSF) sent a letter to all attendees to the NTSF that took place earlier in the month highlighting the topics for future ad hoc working groups and webinars. Most of the topics recommended were tied to the Blue Ribbon Commission's recommendations and transportation related subjects. A copy of the letter is attached.
18. On May 31st Representative John Shimkus from Illinois introduced an amendment to H.R. 5325, the House's appropriations bill for Fiscal Year 2013. The amendment would provide \$10 million for the Nuclear Regulatory Commission to complete its assessment of whether or not the Yucca Mountain site is a safe repository. The \$10 million would come from the Department of Energy's administrative account.

19. In May the Nuclear Regulatory Commission published a draft report for comment, entitled, "Spent Fuel Transportation Risk Assessment". The report utilized improved analysis tools and techniques, improved data availability, and a reduction in the number of conservative assumptions to derive an estimate of the accident risk that is about 100,000 times lower than their 1977 final environmental statement on the transportation of radioactive material. The report listed nine findings, which reconfirmed that the radiological impacts from spent fuel transported in conformance to Nuclear Regulatory Commission regulations were low.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11-1271

September Term 2011

NRC-NWPA

Filed On: May 2, 2012

In re: Aiken County, et al.,

Petitioners

State of Nevada,
Intervenor

BEFORE: Garland and Kavanaugh, Circuit Judges, and Randolph, Senior
Circuit Judge

ORDER

It is **ORDERED**, on the court's own motion, that the Department of Justice be invited to file a brief, not to exceed fifteen (15) pages, by 4:00 p.m. on June 1, 2012, expressing the views of the United States on whether this court should issue a writ of mandamus ordering the Nuclear Regulatory Commission to act on the Department of Energy's pending Yucca Mountain license application. The Nuclear Regulatory Commission may file a response, not to exceed ten (10) pages, by 4:00 p.m. on June 8, 2012. The petitioners may file a response, not to exceed ten (10) pages, by 4:00 p.m. on June 15, 2012.

The Department of Justice and the parties are directed to deliver paper copies of their submissions to the court by the time and date due.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail,
Deputy Clerk

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Congress of the United States

House of Representatives

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May 7, 2012

The Honorable Gregory B. Jaczko
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Chairman:

On March 12, 2012, the Committee wrote to you asking you to clarify or amend the testimony you gave during a December 14, 2011, hearing entitled "The Leadership of the Nuclear Regulatory Commission." Several of your statements during the hearing were inconsistent with the testimony of your fellow Commissioners, NRC employees, and documents obtained by the Committee. The Committee asked for your response by March 23. To date, more than a month later, you have not responded or demonstrated any interest in correcting the record.

Additional information obtained by the Committee raises new questions regarding the veracity of your testimony before Congress. This information, along with the inconsistencies in your testimony outlined in my letter dated March 12, suggests a pattern of disregard for congressional oversight and an abdication of your responsibility to be open and honest with the American public.

The manner in which you interact with NRC career staff is a significant concern both your colleagues on the Commission and NRC employees have raised. Specifically, some have questioned whether you mistreated female employees at the NRC. You have repeatedly denied harassing or intimidating the NRC's female employees.

At the December 14, 2011, hearing, Rep. Gowdy asked, "Have you been verbally abusive to female staff[?]" You responded, "No, I have not."¹

You also testified, "this is the first time I have heard many of these accusations."²

¹ *The Leadership of the Nuclear Regulatory Commission: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112th Cong., Transcript at 76 (Dec. 14, 2011) [hereinafter OGR Hearing Transcript].

² *Id.* at 43.

On December 15, 2011, at a hearing before the Senate Environment and Public Works Committee (EPW), you denied having been aware of an interaction with a female NRC employee that resulted in that employee leaving in tears. In an exchange with Senator Vitter, you testified:

SEN. VITTER:[...]I'm not asking about your intent, your intention. I'm asking, did you ever have an exchange with staff that led to that involved staff breaking down in tears?

MR. JACZKO: Not in my presence, no.

SEN. VITTER: OK. Did you have such an exchange that led to their breaking down in tears shortly thereafter outside of your presence?

MR. JACZKO: I only learned of the possibility of these events in the last several days prior to the hearing yesterday.

SEN. VITTER: OK. So you've learned of that. And how many instances have you learned of?

MR. JACZKO: Well, I -- all I know is what's been stated by the commissioners in the hearing.³

Evidence obtained by the Committee directly contradicts this testimony. In an interview with the NRC Office of the Inspector General (OIG), a female NRC employee provided detailed testimony about a specific incident when she broke down in tears after you questioned her integrity. She testified:

If you're being, you know, chastised by your boss, that's never a good thing [...] that doesn't mean your boss shouldn't chastise you. But in this situation the way that it happened, the way I perceived it was I was very upset, extremely upset [...] I got very emotional. I cried, which is embarrassing. And -- and I had never done that before in front of any supervisor, so it wasn't a comfortable situation.

This employee further stated that “[Chairman Jaczko] tried to settle down. He knew that, you know, I was getting upset. . . .” This incident occurred months before you testified before this Committee and Senate EPW in December 2011.

In their testimony, Commissioners recounted similar incidents involving your behavior in the presence of other female employees. For example, at the December 14, 2011 hearing, Commissioner Magwood testified:

I spoke with three of the women who have had personal experience with the chairman's extreme behavior. These women remain very disturbed by these experiences. A common reflection they all shared with me was, "I

³ *Review of the Nuclear Regulatory Commission's Near-Term Task Force Recommendations for Enhancing Reactor Safety in the 21st Century : Hearing Before the S. Comm. on Environment and Public Works, 112th Cong. (Dec.15, 2011)*

didn't deserve this." One woman said she felt the chairman was actually irritated with someone else but took it out on her. Another told me she was angry at herself for being brought to tears in front of male colleagues. A third described how she couldn't stop shaking after the experience. She sat, talking through what had happened to her, with a supervisor until she could calm down enough to drive home.

Senior female staff in an agency like the NRC are tough, smart women who have succeeded in a male-dominated environment. Enduring this type of abuse and being reduced to tears in front of colleagues and subordinates is a profoundly painful experience for them. The word one woman used was "humiliating."⁴

Though you testified that you were not aware of these events prior to the December 2011 hearings, multiple sources have reported that you personally apologized to at least three female employees following these hearings. No specific names or details of incidents were mentioned at the hearings. If you had no knowledge that your actions had this effect on staff members, how did you know to apologize to specific individuals?

A report issued by the NRC Office of the Inspector General on June 6, 2011, casts further doubt on your assertion that you were unaware of concerns related to your temper and its effect on interactions with NRC employees prior to the December 2011 hearings. The report stated:

Chairman Jaczko acknowledged that he sometimes loses his temper. He said he worked to control it and there are times when he has wished he has said or done things differently. He said he mainly loses his temper with the Commissioners, but acknowledged that there have been a few times when he has said some fairly strong things to the staff. He concluded that his behavior created an environment sometimes in which it is difficult for people to work with him, and he regretted that.⁵

The OIG's report shows you were aware that your temper is a problem well before you testified to Congress in December 2011. In fact, according to your testimony to OIG investigators, you sought professional assistance with managing your temper and its effect on the staff. In an April 2011 interview, you stated:

[T]here have been times when I say things that I just shouldn't say. And it's my own undoing You know, I got a management coach to work on it [W]ith the staff – there have probably been a few times with the staff that I've said some fairly strong things, but I've really worked

⁴ OGR Hearing Transcript at 29-30.

⁵Office of Inspector General, NRC Chairman's Unilateral Decision to Terminate NRC's Review of DOE Yucca Mountain Repository License Application, OIG CASE NO. 11-05, at 44 (June 6, 2011).

The Honorable Gregory Jaczko
May 7, 2012
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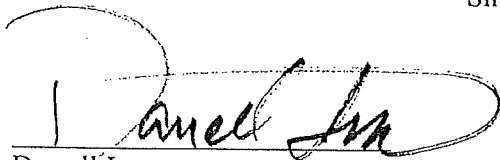
through that, and I had my management coach talk to people. And I think we've worked through that, in all honesty.⁶

Many of the incidents reviewed by the Committee – including one example where you became “shaking angry” – occurred months after you informed the OIG that you hired a professional counselor to help you control your temper. Your inability to control your temper affects the NRC's work environment and the ability of the other Commissioners and employees to carry out its mission.

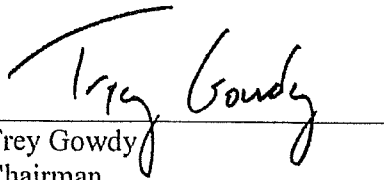
You hold a position of public trust – a privilege with inherent requirements of honesty and transparency. To date, you have failed to meet those responsibilities. Instead, you impeded this Committee's investigation into the management of the NRC and ignored or provided questionable responses to legitimate inquiries from Members of Congress.

Making false statements to Congress is a serious matter.⁷ The Committee has afforded you ample opportunity to clarify your testimony, only to be met with silence. Your failure to respond will be taken into consideration as the Committee evaluates further investigative actions.

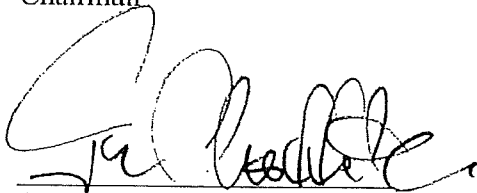
Sincerely,



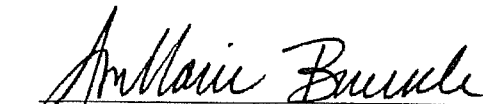
Darrell Issa
Chairman



Trey Gowdy
Chairman
Subcommittee on Health Care, District of
Columbia, Census and National Archives



Jason Chaffetz
Chairman
Subcommittee on National Security,
Homeland Defense,
and Foreign Operations



Ann Marie Buerkle
Member
Committee on Oversight and
Government Reform

cc: The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

⁶ Testimony of Chairman Gregory Jaczko to the Office of the Inspector General, U.S. Nuclear Regulatory Commission (April 1, 2011).

⁷ See 18 U.S.C. § 1001.



TUESDAY, MAY 8

REGISTRATION
Grand Ballroom Foyer
7 a.m.-5 p.m.

CONTINENTAL BREAKFAST AND EXHIBITS
Vinoy Grand Ballroom and Foyer
7-8:30 a.m.

GENERAL SESSION
Royal/Center Court
8:30 a.m.-5 p.m.

Morning Session I
8:30-10 a.m.

Call to Order

Welcome Remarks

Keynote Address

BREAK AND EXHIBITS
Vinoy Grand Ballroom and foyer
10-10:30 a.m.

Morning Session II
Royal/Center Court
10:30 a.m. - Noon

**Consolidated Storage/Blue Ribbon
Commission Report Implementation**

LUNCH AND EXHIBITS
Vinoy Grand Ballroom and Foyer
Noon-1:30 p.m.

Afternoon Session I
Royal/Center Court
1:30-3 p.m.

**Fukushima-Driven Requirements for
Spent Fuel Safety**

BREAK AND EXHIBITS
Vinoy Grand Ballroom and Foyer
3 - 3:30 p.m.

Afternoon Session II
Royal/Center Court
3:30-5 p.m.

**Management Perspectives on Storage
and Transportation Regulatory
Framework Improvements**

WELCOME RECEPTION

Starlite Cruise

6-7:30 p.m. Dockside - Vinoy Basin
7:30-9:30 p.m. on Tampa Bay

WEDNESDAY, MAY 9

REGISTRATION
Grand Ballroom Foyer
7 a.m.-5 p.m.

CONTINENTAL BREAKFAST AND EXHIBITS
Vinoy Grand Ballroom and Foyer
7-8:30 a.m.

AM CONCURRENT SESSIONS
8:30-10 a.m.

Track 1-1
**Storage and Transportation Regulations
and Licensing**

**Part 72 Certificate of Compliance
Regulatory Improvements**

Track 2-1
**Operating Experience and Technical
Issues**

**Cask Loading Operating Experience and
Lessons Learned - 1**



**Track 3-1
Used Fuel Cross-Cutting Issues**

International Experience

**BREAK AND EXHIBITS
Vinoy Grand Ballroom and Foyer
10-10:30 a.m.**

**AM CONCURRENT SESSIONS CONT.
10:30 a.m.-noon**

**Track 1-2
Storage and Transportation Regulations
and Licensing**

**Interface Among NRC Regulations for
Used Fuel Management**

**Track 2-2
Operating Experience and Technical
Issues**

**Cask Loading Operating Experience and
Lessons Learned - 2**

**Track 3-2
Used Fuel Cross-Cutting Issues**

Spent Fuel Pool Criticality Analysis

**LUNCH AND EXHIBITS
Vinoy Grand Ballroom and Foyer
Noon-1:30 p.m.**

**PM CONCURRENT SESSIONS
1:30-3 p.m.**

**Track 1-1
Storage and Transportation Regulations
and Licensing**

**Regulatory Compliance Improvement
Initiatives**

**Track 2-1
Operating Experience and Technical
Issues**

**Assuring the Transportability of Used
Fuel**

**Track 3 -1
Used Fuel Cross-Cutting Issues**

To Be Determined

**BREAK AND EXHIBITS
Vinoy Grand Ballroom and Foyer
3-3:30 p.m.**

**PM CONCURRENT SESSIONS CONT.
3:30-5 p.m.**

**Track 1-2
Storage and Transportation Regulations
and Licensing**

**Regulatory Framework for Long-Term
Used Fuel Management**

**Track 2-2
Operating Experience and Technical
Issues**

Emerging Technical Issues

**Track 3-2
Used Fuel Cross-Cutting Issues**

Storage and Transportation Security

THURSDAY, MAY 10

Registration
Grand Ballroom Foyer
7-10 a.m.

CONTINENTAL BREAKFAST AND
EXHIBITS
Vinoy Grand Ballroom and foyer
7-8:30 a.m.

GENERAL SESSION
Royal/Center Court
8:30 a.m.-noon

Morning Session I
8:30-10 a.m.

Extended Storage and Transportation
Technical Issues

BREAK AND EXHIBITS
Vinoy Grand Ballroom and foyer
10-10:30 a.m.

MORNING SESSION 2
10:30-11:45 a.m.

Regulatory Framework for Recycling

Shutdown Plant ISFSI Issues Caucus

10:30 a.m.-11:45 a.m.

CLOSING REMARKS
11:45 a.m.-noon

ADJOURN

*Agenda is subject to change
Updated February 29, 2012



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

Ecology Division
PO Box 40117 • Olympia, WA 98504-0117 • (360) 586-6770

May 9, 2012

Mark Langer, Clerk
U.S. Court of Appeals, D.C. Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue N.W.
Washington, D.C. 20001

RE: *In Re Aiken County*
U.S. COA, D.C. Circuit No. 11-1271

During oral argument on May 2, 2012, the Court raised questions as to what funds are currently available to the Department of Energy (DOE) to participate in the NRC's Yucca Mountain licensing process. *See* Oral Argument Transcript (May 2, 2012) page 8, line 15 through page 9, line 1; page 73, line 24 through page 74, line 16. Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28(f), Petitioners submit the attached letter dated May 2, 2012, from Peter Lyons, DOE Assistant Secretary for Nuclear Energy, to United States Representatives Fred Upton and John Shimkus, as a supplemental authority, together with the March 22, 2012 letter to which it responds.

According to the May 2 letter, as of February 2010, DOE has \$60.6 million in appropriated, but unexpended, funds to "carry out the requirements of the Nuclear Waste Policy Act." Of that amount, DOE represents that \$18 million are "unobligated." DOE represents that the remaining balance of \$42.6 million are "obligated against existing contracts and unavailable to support new obligations." Petitioners believe at least some of these existing contracts relate to supporting DOE's participation in the NRC's licensing process.

Sincerely,

s/ Andrew A. Fitz

ANDREW A. FITZ
Senior Counsel
(360) 586-6752

AAF:dmm

Enclosures

cc: All Parties of Record

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

March 22, 2012

The Honorable Steven Chu
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Chu:

We write to follow up on your testimony before a hearing of the Energy and Power Subcommittee this past March 8, 2012.

During that hearing, Chairman of the Environment and the Economy Subcommittee John Shimkus asked you whether the Department of Energy (DOE) had the resources to pursue the Yucca Mountain application before the Nuclear Regulatory Commission (NRC), should the U.S. Court of Appeals (D.C. Circuit) order the application to be pursued. You replied that "if the federal court orders us to do so, we will do so." When asked to describe the funding resources, you testified that you would provide to the Committee details of the resources that could be made available.


In connection with this request for resource information, we ask that you respond to the following by March 30, 2012:

1. What is the total funding that could be made available this current fiscal year for support of the NRC license application to construct a repository at Yucca Mountain?
 - a. Please provide details of the particular accounts in which these funds are held.
 - b. Please provide current uncosted obligations and current unobligated funds, including funds held in the Chief Financial Officer's reserves, which could be made available for application support.

2. In DOE's January 2012 Report on Uncosted Balances for Fiscal Year Ended September 30, 2010, the uncosted (or unspent) obligations available at the end of FY 2010, when DOE zeroed out its funding for the Yucca Mountain Program, amounted to a total of \$71.2 million (split between the Nuclear Waste Fund and Defense Nuclear Waste Disposal accounts).
- a. What uncosted obligations in these accounts were available at the end of FY 2011 and are available at present in these accounts?
 - b. Explain, to the extent these amounts differ from those available at the end of FY 2010, how the funds were expended; what, if any, funds were deobligated; and what happened to any such deobligated funds?

Thank you for promptly attending to our requests. Should you have any questions, please do not hesitate to contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy



Department of Energy

Washington, DC 20585

May 2, 2012

The Honorable Fred Upton
Chairman, Committee on Energy
And Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable John Shimkus
Chairman, Subcommittee on Environment
And the Economy
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Upton and Shimkus:

Thank you for your March 22, 2012, letter requesting information on the funding resources available to the Department of Energy (DOE) for licensing activities related to the Yucca Mountain Project. Secretary Chu has asked that I respond on his behalf.

First, I would like to emphasize that DOE is committed to meeting its obligation to dispose of used nuclear fuel and high-level waste. At the direction of President Obama, Secretary Chu chartered the Blue Ribbon Commission on America's Nuclear Future to make recommendations about the best approaches to dealing with the challenges of the back end of the nuclear fuel cycle. The Commission's report, released earlier this year, will inform the Administration's work with Congress to define a responsible and achievable path forward to manage our nation's used nuclear fuel and nuclear waste.

The report of the Blue Ribbon Commission on America's Nuclear Future is a critical step toward finding a sustainable approach to disposing used nuclear fuel and nuclear waste. The Commission's report finds that a consent-based approach and a superb safety record can lead to the successful development and operation of a geologic repository for nuclear waste disposal that is fully supported by the local community. As part of the Administration's commitment to restarting the nuclear industry in America, we will work with Congress and stakeholders to pursue better, consent-based alternatives for the disposition of used nuclear materials and wastes.

As of the end of February 2012, \$60.6 million of the funds appropriated to DOE to carry out the requirements of the Nuclear Waste Policy Act (NWPA) remained unexpended. Of this amount, \$42.6 million are obligated against existing contracts and are unavailable to support new obligations. The remaining \$18.0 million is unobligated as of February, 2012. The funds are held in the following accounts:



Funds Available for Obligation to New NWP Activities, February 2012

Nuclear Waste Disposal:	\$ 8.8 million
Defense Nuclear Waste Disposal:	<u>\$ 9.2 million</u>
Total Available:	\$18.0 million

The Department continues to expend funds to carry out ongoing responsibilities under the NWP such as financial oversight of the Nuclear Waste Fund and the ongoing closeout of activities and contracts at the Yucca Mountain Project. The remaining unobligated balances listed above will be used to fund these ongoing requirements and any other activities the Department undertakes consistent with the NWP.

At the end of FY 2010, \$123.1 million remained unexpended of the funds appropriated to the Department of Energy to carry out the requirements of the Nuclear Waste Policy Act. Of this amount, \$10.9 million were held by the Department, \$40.0 million were unobligated, and \$72.2 million were uncOSTed obligations.

\$50.6 million of these dollars were COSTed during FY 2011, leaving a total balance of \$72.6 million at the beginning of FY 2012. So far this fiscal year, through February, an additional \$11.8 million has been COSTed, resulting in the unexpended balance of \$60.6 million described above.

Of the \$62.4 million COSTed from the beginning of FY 2011 through February 2012, \$19.5 million was for Federal program direction; \$11.8 million was for financial assistance to local governments and communities; \$6.2 million was for contract closeout related to the license application; \$16.2 million was for Yucca Mountain closeout activities, including \$3.1 million for post-closure safety analysis; and \$8.7 million was for various program support activities, including information management and nuclear waste fund audits.

If we can be of further assistance, please feel free to contact me or Mr. Christopher Davis, Deputy Assistant Secretary for House Affairs, at (202) 586-5450.

Sincerely,



Peter B. Lyons
Assistant Secretary
for Nuclear Energy

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May 2012, a copy of the foregoing was filed using the CM/ECF system which will serve the same on all parties of record as follows:

Mullins, Charles	charles.mullins@nrc.gov
Nestor, Christopher R.	christopher.nestor@klgates.com, dottie.messimer@klgates.com, klgateseservice@klgates.com
Andersen, Robert Michael	randersen@clarkhill.com
Cordes, John F., Jr.	John.Cordes@nrc.gov
Ramsay, James Bradford	jramsay@naruc.org
Hartman, Barry M.	barry.hartman@klgates.com, klgateseservice@klgates.com
Lunt, Robin Kimlin Jensen	rlunt@naruc.org
Gottshall, Thomas Rush	tgottshall@hsblawfirm.com, lgantt@hsblawfirm.com, bvaldes@hsblawfirm.com
Woodington, Kenneth Paul	kwoodington@dml-law.com, sstafford@dml-law.com, jangus@dml-law.com, nbouknight@dml-law.com
Bowers, Todd R.	toddb@atg.wa.gov, TORSeaEF@atg.wa.gov, aaronw@atg.wa.gov, taliaz@atg.wa.gov, jenniferd4@atg.wa.gov
Fitz, Andrew Arthur	andyf@atg.wa.gov, ecyolyef@atg.wa.gov, dianam@atg.wa.gov

Suttenberg, Jeremy	jeremy.suttenberg@nrc.gov
Shealy, Samuel Ross	rshealy@hsblawfirm.com
Cottingham, Anne W.	awc@nei.org
Stouck, Jerry	stouckj@gtlaw.com; sklarm@gtlaw.com; gogganst@gtlaw.com
Fitzpatrick, Charles J.	cfitzpatrick@nuclearlawyer.com; smontesi@nuclearlawyer.com
Lawrence, John W.	jlawrence@nuclearlawyer.com; lborski@nuclearlawyer.com
Malsch, Martin Guilbert	mmalsch@nuclearlawyer.com

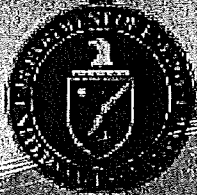
I further certify that, a copy of the foregoing was served on the following via

first class U.S. Mail:

Mr. Burns, Stephen Gilbert
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
One White Flint North
Rockville, MD 20852

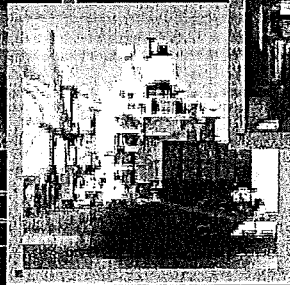
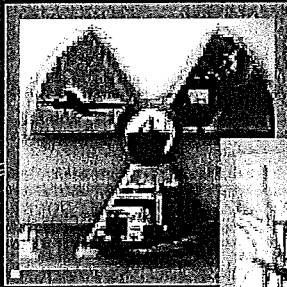
DATED this 9th day of May 2012, in Olympia, Washington.

s/ Andrew A. Fitz
ANDREW A. FITZ
Senior Counsel
(360) 586-6752



U.S. DEPARTMENT OF
ENERGY

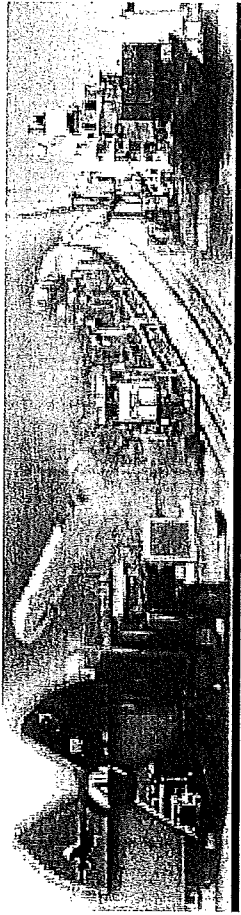
**NATIONAL TRANSPORTATION
STAKEHOLDERS
FORUM**



**THE HILTON KNOXVILLE
KNOXVILLE, TENNESSEE**

MAY 15-17

2012



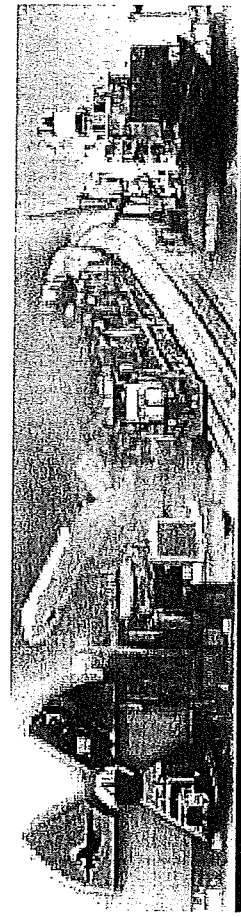
Tuesday, May 15

Regional Meetings

- 8:15 am – 3:30 pm** Western Governors' Association (WGA) Transportation Safety Technical Advisory Group Meeting - *Salon A*
- 8:30 am – 3:15 pm** Southern States Energy Board (SSEB) Radioactive Materials Transportation Committees - *Salon B*
- 9:00 am – 3:30 pm** Council of State Governments (CSG Midwest) Midwestern Radioactive Materials Transportation Committee Meeting - *Salon D*
- 9:00 am – 3:30 pm** Council of State Governments (CSG ERC) Northeast High-Level Radioactive Waste Transportation Task Force Meeting - *Salon E*
- 1:00 pm – 4:00 pm** Tribal Caucus - *Great Smoky B-C*
- 4:00 pm – 4:30 pm** Newcomers' Orientation: - *Salon C*

Presentation available to individuals that are new to the National Transportation Stakeholders Forum, or just want to learn more about it. The presentation will cover the history and activities of the National Transportation Stakeholders Forum (NTSF), and information on working groups, the wiki site, etc.

****Please note: Early Registration opens at 12:00 noon****
Location: *Mezzanine*

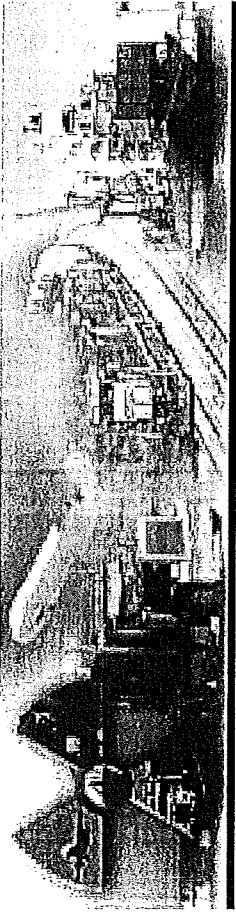


4:00 pm – 6:00 pm Concurrent Meetings:

- **Communications Ad Hoc Working Group:** Established to provide input to DOE on developing, revising, and improving various DOE public information materials, members of this working group will meet to work on ongoing documents. *Salon D-E*
- **WPP Security Communications Protocol Ad Hoc Working Group:** Established to review and revise as needed the security section of the WPPP Program Implementation Guide, members will meet to do follow-up activities from their February 2012 meeting, including planning for a security communications table top exercise. All NTSF participants are invited to attend the meeting and provide feedback on the draft of the security communications protocol developed by the Working Group. *Salon A-B*

Wednesday, May 16

- 7:30 am – 5:00 pm** Registration - *Mezzanine*
- 7:30 am – 8:15 am** Breakfast/Networking Session - *Salon D-E*
- 8:30 am – 8:45 am** National Transportation Stakeholders Forum *Salon A,B,C*
Meeting Convenes (opening comments)
Chris Wells
Assistant Director, Nuclear Programs
Southern States Energy Board



8:45 am – 9:00 am

Welcome to Knoxville
Eddie Mannis

Chief Operating Officer and Deputy to the Mayor

9:00 am – 9:45 am

Keynote Address:

Alice Williams

Associate Principal Deputy Assistant Secretary
U.S. Department of Energy's
Office of Environmental Management

Spotlight on U.S. Department of Energy Sites

9:45 am – 10:15 am **Oak Ridge Operations Office of Environmental Management Overview**

Sue Cange

Oak Ridge Environmental Management Manager

10:15 am – 10:45 am **Carlsbad Field Office Update**

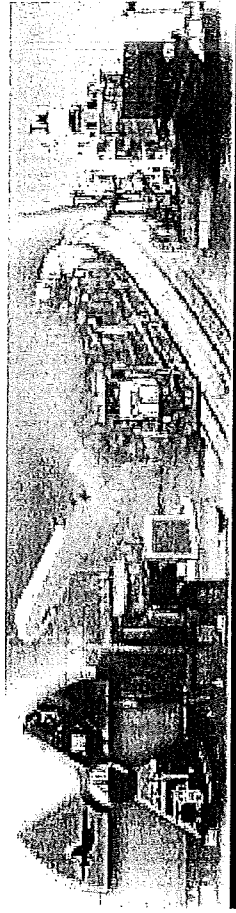
Joe Franco

Carlsbad Field Office Manager

10:45 am – 11:00 am **Break**

11:00 am – 12:15 pm **Radioactive Materials Shipping Campaigns and Related Activities**

- Global Threat Reduction Initiative
Charles Messick & Jeff Galan
National Nuclear Security Administration
- Presentation and Discussion: Task Force for Strategic Developments to Blue Ribbon Commission Recommendations
Phil Niedzielski-Eichner
Chairman
Nuclear Materials Management & Disposition Working Group



- Office of Secure Transportation Activities
National Nuclear Security Administration

12:15 pm – 1:45 pm **Lunch (on your own)**

(Concurrent Sessions)

1:45 pm – 3:15 pm **Afternoon Breakout Sessions: First Round**
Salon E

Session 1 - Nuclear Regulatory Commission: Storage and Disposal Topics

- Transportation Storage Interface - *James Rubenstone*, NRC
(Discussion of NRC activities dealing with the interface between transportation and interim storage facilities)
- Waste Confidence Discussion - *Christine Pineda*, NRC
(Discussion of NRC's plans to develop an Environmental Impact Statement to support a future Waste Confidence Decision)

Salon D

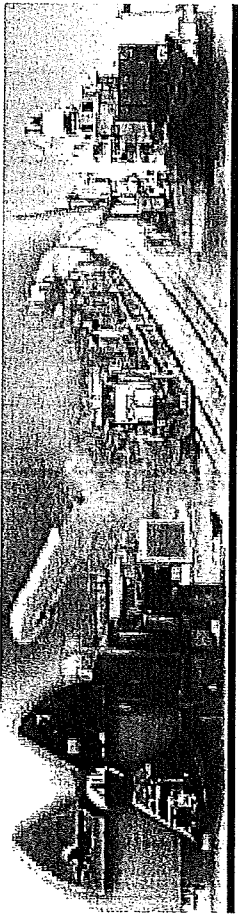
Session 2 - Nuclear Regulatory Commission: Rulemakings and Studies (Facilitated by Earl Easton, NRC)

- Security Rulemaking - *Clyde Ragland*, NRC (Discussion of NRC's newly adopted security rulemaking [10 CFR Part 73] for spent fuel transportation and supporting guidance)
- Spent Fuel Transportation Risk Assessment - *John Cook*, NRC (Overview of the NRC's recently completed draft report which provides an updated assessment of the safety impacts of shipping commercial spent fuel)

Great Smoky B-C

Session 3 - Emerging Technologies for Hazardous Materials Shipments (Facilitated by Bill Reese, Idaho State Police)

- Emerging Technologies Applicable to the Safe and Secure Transportation of Hazardous Materials; *Bill Tate*, Battelle
- HM-ACCESS, project to develop a framework for the introduction of electronic shipping papers for the transport



of packaged hazardous materials in all modes of transport;

- *James Simmons*, PHMSA
Using Transportation Technology to Increase Efficiencies in Shipping—Real Life Experience in OR; *Dean Newton*, Turnkey Transportation Services

3:15 pm – 3:30 pm Break

(Concurrent Sessions)

**3:30 pm – 5:00 pm Afternoon Breakout Sessions: Second Round
Salon E**

Session 1 - Nuclear Regulatory Commission: Storage and Disposal Topics

- Transportation Storage Interface - *James Rubenstone*, NRC (Discussion of NRC activities dealing with the interface between transportation and interim storage facilities)
- Waste Confidence Discussion - *Christine Pineda*, NRC (Discussion of NRC's plans to develop an Environmental Impact Statement to support a future Waste Confidence Decision)

Salon D

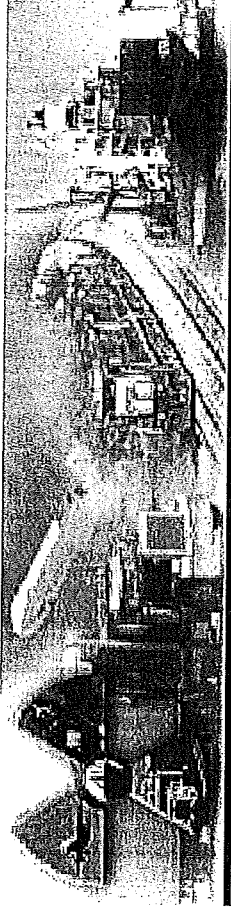
Session 2 - Nuclear Regulatory Commission: Rulemakings and Studies (Facilitated by *Earl Easton*, NRC)

- Security Rulemaking - *Clyde Ragland*, NRC (Discussion of NRC's newly adopted security rulemaking [10 CFR Part 73] for spent fuel transportation and supporting guidance)
- Severe Accident Studies - *Christopher Bajwa*, NRC (An overview of NRC case studies of severe rail and highway accidents involving fires. Studies were undertaken to address the 2006 NAS study "Going the Distance")

Great Smoky B-C

Session 3 - Transportation Requirements: Harmonization, DOE Directives and Transportation Emergency Preparedness Program Activities

(Facilitated by Tim Runyon, Illinois Emergency Management



Agency)

- Harmonization of Federal and International Regulations; *Michael Conroy*, DOT
- Transportation Emergency Preparedness Program (Planning for a Shipment Campaign – Identification of Responder Needs); *Tom Clawson*, TRG
- Update on EM Transportation Program Activities (Motor Carrier Evaluation Program, DOE Directives, Upcoming Shipping Activities); *Steve O'Connor*, EM-33

Thursday, May 17

7:00 am – 10:00 am Registration - Mezzanine

7:00 am – 8:00 am Breakfast/Networking Session - Salon D-E

**8:00 am – 9:00 am NTSF Activities and Accomplishments
Salon A,B,C**

Progress made since the 2011 NTSF meeting in Denver will be detailed including an overview of ad hoc working group activities (significant accomplishments, next steps, etc., webinars, and resources to promote the mission of the Forum).
Steve O'Connor & Anne deLain Clark

**9:00 am – 9:30 am Automated Meeting Evaluation
Chris Wells and Steve O'Connor**

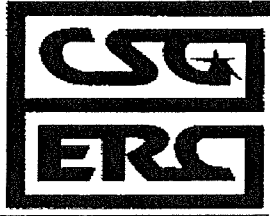
**9:30 am – 10:00 am Wrap up/Path Forward/Adjourn National
Transportation Stakeholders Forum**

10:30 am – 5:30 pm Tour of the Oak Ridge Site

(Concurrent Sessions)

8:00 am – 12:00 pm TRANSCOM User's Group Meeting - Salon D-E

1:00 pm – 5:00 pm TRANSCOM Training - Sequoyah I Room



**Northeast High-Level Radioactive Waste Transportation Task Force
Spring Meeting – May 15, 2012**

Hilton Knoxville

501 West Church Avenue, Knoxville, TN 37902-2591

Agenda

Tuesday, May 15 – 9:00 AM – 3:30 PM / Salon E [Set up conference call link]

- 8:00 a.m.** **Continental Breakfast** – served in meeting room
- 9:00 a.m.** **Task Force Business Meeting** – John Giarrusso, MEMA and Rich Pinney, NJDEP Co-chairs presiding
- **Welcome: Introductions; Agenda Review; Announcements**
 - **2012 funding**
 - **Co-Chair Election**
 - **Rules of Procedure**
 - **Membership:** members & alternates appointment status
 - **Legislative Liaisons**
 - **Staff Regional Meeting Attendance**
 - **Report on NTSF Working Groups:** Sgt. Tom Fuller (NY) Security WG; John Angil (VT) Communications WG, John Giarrusso (MA) NTSF Planning Committee; Cort – Evaluation
 - **Current Projects:** PA/NY NNSA planning, rail inspection protocol, NE planning guide
 - **DOE Cooperative Agreement:** FY 2013 work plan & funding
 - **Discussion of future priorities:** CSG-ERC 2012 annual meeting
 - **Review October 2011 BRC meeting follow-up**
 - **Brainstorm topics for NTSF webinars and emerging issues for NTSF working groups**
- 10:30 a.m.** **Break /Refreshments Provided** – served in meeting room
- 10:45 a.m.** **Roundtable of Northeast State Reports**
- 11:30 a.m.** **NRC Integrated SNF Management / Transportation Package Performance Update**
Earl P. Easton, NRC Spent Fuel Project Office, Senior Level Advisor – Transportation
- 11:45 p.m.** **Planning SNF/HLW Rail Shipments: Near-site Infrastructure Study, Inspection Protocols**
Lawrence “Mel” Massaro, Region II Federal Railroad Administration, US DOT
- 12:00 noon** **Buffet Lunch** – served in meeting room
- 12:30 p.m.** **BRC Response to Northeast Recommendations**
Cort Richardson – Project Director, NE HLRW Transportation Project, CSG-ERC
- 1:00 p.m.** **DOE Office of Environmental Management National Report / TEPP Update**
Ella McNeil, Transportation Emergency Preparedness Program
Ken Keaton, Tom Clawson, TRG, Inc.

- 1:30 p.m. NE DOE Facilities & Shipment Update - Brookhaven National Laboratory**
Terri Kneitel, PE, PMP, Environmental Engineer, BNL Site Office (by speaker phone)
- 1:45 p.m. Update: Decommissioning Plant Coalition/ Nuclear Waste Strategy Report, Federal Lawsuit, Yankee Companies' ISFSIs**
Eric Howes, Public and Government Affairs Director, Maine Yankee Atomic Power Company
- 2:00 p.m. DOE WIPP Update / Carlsbad Field Office Report**
Bill Mackie, Institutional Programs Manager
- 2:45 p.m. Break /Refreshments Provided – served in meeting room**
- 3:00 p.m. NNSA Report – Foreign Research Reactor SNF Acceptance Program: Northeast Shipments**
Chuck Messick, Program Manager
Jeff Galan, Deputy Program Manager
- 3:15 p.m. Closing Session**
- Other business
 - Plan next meeting
 - Review meeting action items
- 3:30 p.m. Adjourn**

United States Senate

WASHINGTON, DC 20510

May 18, 2012

The Honorable Steven Chu
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Secretary:

We are writing regarding the report of the Blue Ribbon Commission on America's Nuclear Future (BRC) and to ask that you move forward expeditiously to address nuclear fuel at decommissioned reactors.


We understand that you have formed an internal working group that will assess the BRC's recommendations and develop a strategy for the safe and secure storage and management of used nuclear fuel that would build upon the BRC's work. Moreover, the Department's budget request for FY 2013 included an assumption for funds dedicated to some preliminary evaluation of consolidated interim storage (CIS) as well as transportation issues focused initially on decommissioned nuclear reactor sites.

We were pleased to learn recently that DOE intends to restore funding to regional transportation stakeholder groups whose planning activities including infrastructure assessment are crucial to the successful movement of used nuclear fuel from decommissioned reactor sites. We thank you for moving quickly to address this important issue.

As you know, the Senate Appropriations Committee recently allocated at least \$19.7 million for the DOE to initiate a pilot program to establish one or more consolidated interim storage facilities for spent nuclear fuel at volunteer host sites beginning with decommissioned reactor fuel in Fiscal Year 2012 and subsequent years. There is a need for early, site-specific assessments of the transportation readiness at these reactor sites, and the procurement and construction of transportation infrastructure that includes shipping casks and appropriate rail cars. Finally, dialogue between the federal government, communities, state governments and industry would be valuable in order to develop a consent-based siting approach for both CIS and other repository facilities.

The BRC report was developed to catalyze a national strategy to address our failed nuclear waste policy. There is not a moment to lose. Accordingly, we request that you consider advancing these recommendations, especially with respect to fuel that remains stored at decommissioned facilities.

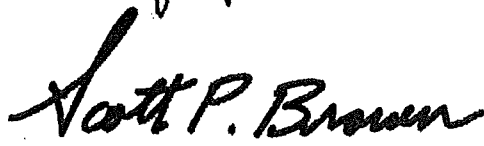
Sincerely,




OLYMPIA J. SNOWE
United States Senator



HERB KOHL
United States Senator



SCOTT P. BROWN
United States Senator



SUSAN M. COLLINS
United States Senator

Cc: Senator Dianne Feinstein
Senator Lamar Alexander
Senator Jeff Bingaman
Senator Lisa Murkowski
Senator Barbara Boxer
Senator James Inhofe



Fed. Circ. Ups Utilities' Nuclear Waste Award To \$159M

By Lana Birbrair

Law360, New York (May 18, 2012, 6:43 PM ET) -- The Federal Circuit on Friday increased by \$17 million a lower court's award of \$142 million in combined damages to three nuclear utilities for the government's breach of agreements with them governing the disposal of spent nuclear fuel.

In a published decision for a consolidated appeal, a three-judge panel found that the U.S. Court of Federal Claims was wrong to exclude claims by Yankee Atomic Electric Co. for wet storage pool costs, increasing the total damages awards to the company, along with Maine Yankee Atomic Power Co. and Connecticut Yankee Atomic Power Co., to almost \$160 million.

"This has been a very, very long time coming and we're just very pleased with the unanimous decision," said Catherine E. Stetson of [Hogan Lovells](#), an attorney for the Yankees, noting that although the win was a big step for the companies, the very specific facts of the damages case could have a limited impact on a slew of similar cases pending in the lower court.

In 2004, the trial court awarded more than \$100 million to the Yankees to compensate for the cost of building dry storage, or an independent spent fuel storage installation, and racking wet pools to increase storage capacity, although Yankee Atomic was to be compensated only for dry storage, according to the opinion.

The case was appealed to the Federal Circuit, which found the trial court made its causation analysis without formally interpreting the contract between the federal government and the utility companies, remanding the case for further damages calculations.

On remand, the trial court accepted the fuel exchange model presented by the Yankees' expert and concluded that the Yankees would not have built dry storage if the government had not breached its contracts, and that Maine Yankee and Connecticut Yankee would not have racked their storage pools absent the breach, according to the opinion.

The trial court, however, rejected Yankee Atomic's argument that it was owed for costs relating to

wet storage and Nuclear Regulatory Commission fees for the years 2000 and 2001, finding that the company could not fight for those costs during the remand because it had not appealed them to the Federal Circuit.

The government appealed, arguing that the trial court erroneously based its damages calculations on estimates and speculation, specifically an exchanges model that was not grounded in fact and did not account for the U.S. Department of Energy's discretion to reject fuel exchange requests, the opinion said.

The government acknowledged, however, that its arguments conflict with binding precedent and appealed the issues solely to preserve the right to seek en banc review, according to the opinion.

In a counter-appeal, the Yankees asked the Federal Circuit to reverse the trial court's exclusion of Yankee Atomic's wet pool costs and NRC fees of approximately \$17 million.

The Federal Circuit sided with the Yankees, finding that the trial court had misunderstood its task as that of solely re-examining the causation for discrete costs previously awarded.

Instead, the appeals court said that the remand was ordered because the Court of Federal Claims did not assess damages properly and the remand was not limited to a re-examination of costs previously awarded.

Whether or not the trial court originally granted Yankee Atomic's damages claims, it should have determined on remand that Yankee Atomic's wet storage pool would have been emptied by the end of 1999 in the hypothetical world and awarded damages for the extra time spent storing nuclear waste, the opinion said.

For public health and safety reasons, the government has long assumed responsibility for disposal of highly radioactive waste such as that involved in this litigation.

In 1983, the U.S entered into contracts with civilian nuclear utilities including the Yankees. In return for payment of fees funded by ratepayers calculated to cover the Energy Department's costs of developing and implementing the waste disposal system required by that contract and the Nuclear Waste Policy Act, the Energy Department was to start removing, transporting and disposing of utility spent nuclear fuel no later than Jan. 31, 1998, according to court documents.

The contracts have been breached by a series of substantial delays on the Energy Department's part, and the Yankees' construction of dry storage, purchase of mitigating measures and

consequent incurred costs were a result of and substantially caused by the Energy Department's delays, the trial court ruled.

Representatives for the U.S. Department of Justice declined to comment on the case.

Judges Randall R. Rader, Alan D. Lourie and Kimberly Moore sat on the panel for the Federal Circuit.

The Yankees are represented by Catherine E. Stetson and Dominic F. Perella of Hogan Lovells and Jerry Stouck of Greenberg Traurig LLP.

The case is Yankee Atomic Electric Co. v. U.S., case number 11-5020, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Andrew Park.

United States Court of Appeals
for the Federal Circuit

YANKEE ATOMIC ELECTRIC COMPANY,
Plaintiff-Cross Appellant,

v.

UNITED STATES,
Defendant-Appellant.

MAINE YANKEE ATOMIC POWER COMPANY,

Plaintiff-Cross Appellant,

v.

UNITED STATES,
Defendant-Appellant.

CONNECTICUT YANKEE ATOMIC POWER
COMPANY,

Plaintiff-Cross Appellant,

v.

UNITED STATES,
Defendant-Appellant.

2011-5020, -5021, -5022, -5027, -5028, -5029

Appeals from the United States Court of Federal Claims in Case No. 98-CV-126, 98-CV-474, 98-CV-154, Senior Judge James F. Merow.

Decided: May 18, 2012

CATHERINE E. STETSON, Hogan Lovells US LLP, of Washington, DC, argued for plaintiffs-cross appellants. With her on the brief was DOMINIC F. PERELLA. Of counsel on the brief was JERRY STOUCK, Greenberg Traurig, LLP, of Washington, DC.

HAROLD D. LESTER, JR., Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, argued for defendant-appellant. With him on the brief were TONY WEST, Assistant Attorney General, JEANNE E. DAVIDSON, Director, MARIAN E. SULLIVAN, Senior Trial Counsel, ANDREW P. AVERBACH, Senior Trial Counsel, ANTHONY W. MOSES, SETH W. GREENE and SCOTT D. SLATER, Trial Attorneys. Of counsel on the brief was JANE K. TAYLOR, Office of General Counsel, United States Department of Energy, of Washington, DC.

Before RADER, *Chief Judge*, LOURIE and MOORE, *Circuit Judges*.

RADER, *Chief Judge*.

This consolidated appeal is the latest manifestation of the numerous contract disputes arising from the Government's failure to accept and dispose of radioactive waste from the nation's nuclear utilities. Specifically, the appeal flows from this court's decision in *Yankee Atomic*

Electric Co. v. United States, 536 F.3d 1268 (Fed. Cir. 2008), which reversed the United States Court of Federal Claims' initial damages determination, and remanded for a calculation of damages according to the rate at which the Government was contractually obligated to accept the utilities' waste.

Yankee Atomic Electric Company (Yankee Atomic), Maine Yankee Atomic Power Company (Maine Yankee), and Connecticut Yankee Atomic Power Company (Connecticut Yankee) (collectively, the Yankees) originally brought this action seeking damages to compensate for the cost of storing spent nuclear fuel (SNF) and high-level radioactive waste (HLW) beyond the time that the Government promised by contract to begin storing that waste in a permanent and secure repository. On remand, the trial court correctly calculated damages for dry storage construction costs, deferred costs of loading waste to the Department of Energy (DOE), and reracking costs. However, the trial court erred in denying Yankee Atomic's claim for a portion of its wet pool storage costs and Nuclear Regulatory Commission (NRC) fees. Unlike *Consolidated Edison Co. of N.Y. v. United States*, ___ F.3d ___, 2012 WL 1284402 (Fed. Cir. Apr. 16, 2012), this case does not include a claim for NRC fees that allegedly increased due to DOE's breach. Rather, the plaintiff here claims that no NRC fees would have been incurred by the inactive plant if the SNF had been removed in a timely manner pursuant to the Standard Contract. See *Yankee Atomic Power Co. v. United States*, 94 Fed. Cl. 678, 725 (2010).

Therefore, this court affirms-in-part and reverses-in-part the trial court's damages award as recited below.

I.

This court has often addressed the Standard Contract between the Government and nuclear utilities, and the Government's liability for a partial breach. See *Me. Yankee Atomic Power Co. v. United States*, 225 F.3d 1336, 1337-40 (Fed. Cir. 2000); *Yankee Atomic Elec. Co. v. United States*, 73 Fed. Cl. 249, 250-259 (2006) (*Yankee I*). However, the history of this case is necessary on this appeal from an earlier remand decision.

Starting in August 2004, the trial court held a seven-week trial on damages. *Yankee I*, 73 Fed. Cl. at 251. Yankee Atomic received as damages \$32,863,366 to compensate for the cost of building dry storage (i.e., an independent spent fuel storage installation (ISFSI)); Connecticut Yankee received \$8,350,893 for reracking its wet pool to increase storage capacity and \$25,803,986 for ISFSI construction; and Maine Yankee received \$10,069,018 for reracking costs and \$65,705,536 for ISFSI construction expenses. *Id.* at 326. During the *Yankee I* trial, the Government argued that Greater Than Class C radioactive waste (GTCC) was not covered by the Standard Contract. According to the Government, the Yankees would have been required to build dry storage for GTCC in the non-breach world, thus incurring ISFSI costs (in whole or in part). *Id.* at 312-15. The trial court rejected this argument. *Id.*

On appeal, this court accepted the trial court's "findings on foreseeability, reasonable certainty and the use of the substantial causal factor standard" for causation purposes, as well as the determination that an award of Nuclear Waste Fund fees should be denied as premature. *Yankee Atomic Elec. Co. v. United States*, 536 F.3d 1268, 1272-4 (Fed. Cir. 2008) (*Yankee II*). However, this court noted that the trial court made its causation analysis

“without formally interpreting the Standard Contract” and did not fulfill its “obligation” to “apply [the 1987 annual capacity report] rate in determining the substantial cause of the Yankees’ costs.” *Id.* at 1274. For that reason, this court remanded for application of the 1987 annual capacity report (ACR) rate to the damages claimed by the parties. The 1987 ACR set forth the projected annual waste receiving capacity for DOE and the annual acceptance ranking relating to DOE contracts for the disposal of SNF and/or HLW. *Pac. Gas & Elec. Co. v. United States*, 73 Fed. Cl. 333, 399-400 (2006).

On remand, the trial court accepted the fuel exchange model presented by the Yankees’ expert, and concluded that the Yankees would not have built dry storage; Maine Yankee and Connecticut Yankee also, according to the trial court, would not have reracked their storage pools under the 1987 ACR rate. *Yankee Atomic Power Co. v. United States*, 94 Fed. Cl. 678, 685-86 (2010) (*Yankee III*). The trial court found that, using fuel exchanges, the Yankees would have emptied their wet storage facilities in the non-breach world within the first ten years of DOE’s performance. *Id.* at 688-93.

The trial court also addressed certain “matters beyond the remand and mandate.” *Id.* at 717-19. Each side claimed the other presented issues beyond the scope of the remand. *Id.* at 719-20. The Yankees claimed that the Government’s argument to include GTCC pickup in the 1987 ACR queue was “of new cloth” and beyond the scope of the mandate. *Id.* at 719, 721. The Government responded that the Yankees’ claims for the cost of transferring SNF from their wet pools to DOE (including crane upgrades) were beyond the scope of the mandate. *Id.* at 720, 726. The Government also objected to Yankee Atomic’s claim for the costs to operate and maintain (O & M) its wet pool for 2000 and 2001, as well as its NRC fees.

The trial court found that the Government's argument to include GTCC into the 1987 ACR queue was not raised during the *Yankee I* trial and was thus barred. *Id.* at 722. However, the trial court noted that even if the issue was not barred, "removal of GTCC by the date of at least the last SNF removal" would likely have occurred. *Id.* at 723. Moreover "the GTCC generated from shut-down reactors was statistically insignificant and would not have had an appreciable affect [sic] on the SNF queue." *Id.* at 724. Finally "costs associated with dry storage and reracking would not have been incurred due to the presence of GTCC." *Id.* at 725.

Another remand issue involved the costs of future loading to DOE and crane upgrades. The Yankees had voluntarily deducted these costs from the damages in *Yankee I* under the belief these costs were avoided costs and thus not recoverable. On remand, the trial court concluded that intervening Federal Circuit precedent indicated these were actually deferred costs, not avoided costs, and thus should not be deducted from the Yankees' damages. *Yankee III*, 94 Fed. Cl. at 729-30.

Lastly, the trial court rejected Yankee Atomic's attempt to resurrect its claims for costs relating to wet storage and NRC fees for the years 2000 and 2001. Yankee Atomic unsuccessfully sought these costs during *Yankee I*, but did not appeal the costs in *Yankee II*. *Yankee III*, 94 Fed. Cl. at 725. The trial court found that Yankee Atomic could not "attack the original trial decision" during the remand because it had not appealed the issue. *Id.* The trial court found in the alternative that Yankee Atomic was entitled to an additional \$16,709,742 for wet pool O & M costs and \$312,000 in NRC fees. *Id.* at 726.

On appeal, the Government complains that the trial court erroneously based its damages calculations upon estimates and speculation. Specifically, the Government claims that the trial court errantly relied on an exchanges model which was not grounded in fact and did not account for DOE's discretion to reject fuel exchange requests. The Government likewise appeals the trial court's interpretation of the *Yankee II* remand as allowing the Yankees to claim damages conceded in the original trial yet precluding the Government from asserting that the Yankees must establish how GTCC would impact the SNF acceptance queue. The Government also appealed this court's prior rulings regarding the appropriate rate of SNF and HLW acceptance under the Standard Contract and the status of GTCC as HWL under the Standard Contract. See *Carolina Power & Light Co. v. United States*, 573 F.3d 1271 (Fed. Cir. 2009); *Yankee II*, 536 F.3d at 1278-79. The Government recognizes that its arguments conflict with binding precedent and appealed the issues solely to preserve its right to seek en banc review. In the counter appeal, the Yankees raise just one issue, requesting that this court reverse the trial court's exclusion of Yankee Atomic's wet pool O & M costs and NRC fees.

II.

This court reviews the trial court's legal conclusions without deference, *Yankee II*, 536 F.3d at 1272, and its factual findings for clear error, *Indiana Michigan Power Co. v. United States*, 422 F.3d 1369, 1373 (Fed. Cir. 2005). Factual findings include "the general type of damages to be awarded . . . , their appropriateness . . . , and rates used to calculate them" *Home Sav. of Am. v. United States*, 399 F.3d 1341, 1347 (Fed. Cir. 2005). The trial court is given broad discretion, "subject to certain controlling principles," in determining an appropriate quantum of damages. *Hi-Shear Tech. Corp. v. United States*, 356

F.3d 1372, 1382 (Fed. Cir. 2004) (citing *Ferguson Beaugard v. Mega Sys. LLC*, 350 F.3d 1327, 1345 (Fed. Cir. 2003)). This court reviews an interpretation of its own mandate without deference. *Laitram Corp. v. NEC Corp.*, 115 F.3d 947, 950-51 (Fed. Cir. 1997).

III.

This court recently affirmed a trial court's use of an exchanges model when calculating damages for the storage of SNF in *Dairyland Power Cooperative v. United States*, 645 F.3d 1363, 1369 (Fed. Cir. 2011). In *Dairyland*, the trial court reviewed legal arguments and testimony (both fact and expert) and awarded damages based on an exchanges model because it determined that the utility "was entitled to damages for its storage of SNF." 645 F.3d at 1371. This court reviewed the trial court's determination and affirmed the trial court's damages award based on an exchanges model because "[t]he question of whether Dairyland's model is or is not too speculative to be reliable is, again, a fact issue on which we owe deference to the Court of Federal Claims." *Id.* In *Dairyland*, this court found no error in the trial court's determination because "it appear[ed] to have been grounded in proper weighing of the evidence." *Id.* at 1370.

Similar deference must be given in this case. The Government has recycled the arguments already rejected in *Dairyland*. In *Dairyland*, the Government asserted that the utility "did not identify the specific [other] utilities it would have obtained year-one delivery commitment schedules from," that local communities might have opposed the exchanges, and that the DOE had discretion to reject proposed fuel exchanges. 645 F.3d at 1369. The Government has raised the same arguments in the instant case. See Appellant's Brief 28-35. Just as this court found in *Dairyland*, the Government did not identify any

record evidence to support a finding that the trial court committed clear error in adopting an exchanges model.

The trial court previously determined that in the non-breach world, DOE would not have adopted an oldest fuel first ("OFF") procedure. Rather, fuel exchanges would have occurred. *Yankee III*, 94 Fed. Cl. at 690. The Government also admitted that exchanges would have occurred "at some point, and in some fashion." *Id.* The trial court made the following conclusion concerning the exchanges model:

Compelling financial incentives, coupled with contractual provision for exchanges, which under full government performance, must be assumed to be used, and the history of utilities creating vigorous markets in analogous circumstances, all lead the court to conclude that it is plausible, and more likely than not, the market [the damages expert] presented would have developed, and to the extent he opined.

Id. at 692. The trial court noted that "[t]he government did not suggest that [the damages expert] was selective in his data, that he failed to gather appropriate data, or that his analysis was other than robust." *Id.* As such, the trial court "[c]redit[ed] preponderant evidence" and concluded that the Yankees would not have built dry fuel storage in the non-breach world. *Id.* at 693.

DOE's discretion to approve exchanges does not alter this analysis. "While considerations such as DOE's discretion to approve such transactions and worries about the presence of failed fuel are certainly relevant, they are not overriding concerns sufficient to make the court's finding clearly erroneous." *Dairyland*, 645 F.3d at 1371. The trial court dedicated over twenty pages of analysis to the exchanges model, including detailed review of the

model, the damages expert, and other relevant testimony. *Yankee III*, 94 Fed. Cl. at 687-708. The trial court concluded that DOE's discretion "would not have been exercised arbitrarily and capriciously but consistent with the obligation of good faith and fair dealing," and thus DOE discretion would not have invalidated the Yankees' fuel-out dates determined under the exchanges model. *Id.* at 700. As such, this court affirms the trial court's factual determination and award of damages based on an exchanges model.

IV.

This court next turns to the issue of whether the trial court erred in interpreting the remand ordered in *Yankee II*. As this court has previously stated, "[u]pon return of its mandate, the district court cannot give relief beyond the scope of that mandate, but it may act on matters left open by the mandate." *Laitram Corp.*, 115 F.3d at 951 (citing *Caldwell v. Puget Sound Elec. Apprenticeship & Training Trust*, 824 F.2d 765, 767 (9th Cir. 1987)). However, the trial court should consider "both the letter and the spirit of the mandate" *Engel Indus., Inc. v. Lockformer Co.*, 166 F.3d 1379, 1383 (Fed. Cir. 1999). Thus, "it may be appropriate in some circumstances for a court to revisit an issue that would otherwise be deemed waived and beyond the scope of an appellate mandate." *Tronzo v. Biomet, Inc.*, 236 F.3d 1342, 1349 (Fed. Cir. 2001). This may occur when "there has been a substantial change in the evidence," *id.*, or where an intervening decision has changed the law, *Amado v. Microsoft Corp.*, 517 F.3d 1353, 1359 (Fed. Cir. 2008) ("An appellate mandate does not turn a district judge into a robot, mechanically carrying out orders that become inappropriate in light of subsequent factual discoveries or changes in the law." (quoting *Barrof v. Falck*, 11 F.3d 729, 731 (7th Cir. 1993))). *Cf. Gould, Inc. v. United States*, 67 F.3d 925, 930

(Fed. Cir. 1995) (law-of-the-case doctrine does not apply where “controlling authority has since made a contrary decision of the law applicable to the issues”).

With respect to the Yankees’ claims for future loading costs and the costs of crane upgrades, the trial court correctly noted that the intervening precedent of *Carolina Power, Indiana Michigan*, and *Yankee II* changed the legal landscape for the calculation of damages on these issues. When the *Yankee I* trial occurred, future loading costs or costs associated with the transfer of fuel to DOE were considered avoided costs, and thus not recoverable by SNF plaintiffs. The Yankees agreed to reduce their breach world ISFSI costs by the estimated future cost of transferring SNF from their wet pools to DOE in the non-breach world, on the ground these expenses were avoided because of the breach. *Yankee I*, 73 Fed. Cl. at 322-23. The subsequent change in case law allowed plaintiffs to recover these costs. See *Carolina Power*, 573 F.3d at 1277.

When the trial court received this consolidated appeal on remand, it correctly allowed the Yankees to retract their initial voluntary deductions for these costs and reinstate these amounts as damages. The Government should not be allowed the unwarranted benefit of the Yankees’ voluntary deductions when those deductions would not have been necessary under subsequent precedent. As such, this court affirms the trial court’s determination regarding the deferred costs for loading waste to DOE.

This court also affirms the trial court’s finding that the Government could not assert that GTCC must be included in the SNF acceptance queue calculations. In *Yankee II*, this court held that DOE’s obligations under the Standard Contract apply to SNF and HLW, and

placed GTCC within the definition of HLW. 536 F.3d at 1277. On remand, the Government argued that acceptance of GTCC would affect DOE's waste acceptance queue, potentially changing the Yankees' fuel-out dates. *Id.* at 721-22. The trial court correctly concluded that the Government was barred from asserting this position because it was not presented at trial. *See Cardiac Pacing, Inc. v. St. Jude Med., Inc.*, 576 F.3d 1348 (Fed. Cir. 2009) (applying mandate principles to defenses, holding that the mandate rule barred the trial court from considering a newly raised anticipation defense on remand, and finding error when the trial court went beyond the mandate).

During the *Yankee I* trial, the Government's only argument relating to GTCC was that it had no obligation to remove GTCC under the Standard Contract because GTCC was not HLW. During the *Yankee I* trial, the Government could have argued in the alternative that removal of GTCC, if required, would have changed DOE's waste acceptance queue. Without this alternative argument, the trial court need not now rewind the clock to pursue a new litigation approach. Unlike the Yankees' costs for loading to DOE discussed above, the Government has not identified an exception to the mandate rule such as a change in the law or manifest injustice which would justify the requested departure from the norm. As such, this court affirms the trial court's determination on this point.

In holding that the Government could not raise its GTCC argument during the remand, this court does not address the trial court's alternative finding that "the GTCC generated from shut-down reactors was statistically insignificant," and that "costs associated with dry storage and reracking would not have been incurred due to the presence of GTCC." *Yankee III*, 94 Fed. Cl. 724-25.

As the Government was precluded from raising this argument, judicial restraint counsels against making any binding findings on this point. Thus, as stated in *Yankee II*, “the proper valuation of GTCC waste disposal remains open for adjudication in future proceedings once the costs of this operation are fully realized and understood.” 536 F.3d at 1278.

V.

Lastly, this court considers whether the trial court erred by excluding some of the costs Yankee Atomic incurred to operate its wet storage pool. In *Pacific Gas & Electric Co. v. United States*, this court affirmed a trial court’s interpretation of a similar mandate to that ordered in *Yankee II*: reconsideration of the damages presented during the initial trial in view of the 1987 ACR. 668 F.3d 1346, 1351 (Fed. Cir. 2012). This court found that the trial court was allowed to “revisit and reconsider” an issue that was before the trial court during the original trial, noting that “while a mandate is controlling as to matters within its compass, on the remand a lower court is free as to other issues.” *Id.* (quoting *Engel Indus. Inc.*, 166 F.3d at 1382). A contrary holding would “run the risk of not properly allowing for reconsideration of the mitigation damages sought, and deemed proven by the trial court,” and thus plaintiffs would not be made whole. *Id.*

In like fashion, Yankee Atomic claimed its wet storage pool costs initially during the *Yankee I* trial. The trial court denied these costs on the ground that Yankee Atomic’s wet pool would not have been emptied by the 1999 fuel-out date. *Yankee I*, 73 Fed. Cl. at 306-07. On remand, the trial court found as a matter of fact that “in the hypothetical world of full government performance at the 1987 ACR rates . . . all SNF [would be] removed from Yankee Atomic’s wet pool by the end of 1999.” *Id.* at 694.

Since its pool would have been empty in the non-breach world by 1999 under this new calculation, Yankee Atomic reasserted its claim for O & M costs for 2000 and 2001 as well as its NRC fees. *Id.* at 725.

The trial court erroneously stated that the scope of the remand in *Yankee II* was to reexamine the causation for “discrete costs previously awarded,” and not to open the door for to additional costs. *Id.* at 726. This interpretation is too narrow. The remand was ordered “[b]ecause the Court of Federal Claims did not assess damages according to the rate at which the Government was contractually obligated to accept the utilities’ waste.” *Yankee II*, 536 F.3d at 1271. The remand was not limited to a reexamination of costs previously awarded, and the trial court must consider both the letter and the spirit of this court’s remand order. *Engel Indus., Inc.*, 166 F.3d at 1383.

Regardless of whether the trial court originally granted or denied Yankee Atomic’s damages claims, once the trial court determined on remand that all SNF would have been removed from Yankee Atomic’s wet storage pool by the end of 1999 under the 1987 ACR rates in the hypothetical world, the court was required to apply that finding to its prior damages calculations. Under the *Yankee II* remand, the trial court was free to “revisit and reconsider” issues raised at trial, particularly as its application of this court’s mandate changed the factual predicate for its prior decision to deny Yankee Atomic’s costs. Indeed this record demanded such attention to the implications of applying the 1987 ACR rates.

Unlike the Government’s argument regarding GTCC, Yankee Atomic’s claim for these costs was initially raised at trial. As such, this court reverses the trial court’s denial of Yankee Atomic’s wet storage pool costs and NRC

fees. The trial court wisely foresaw that this court could reverse its refusal to consider these costs. For this reason, the Court of Federal Claims found that Yankee Atomic had established these costs with reasonable certainty. Thus, this court need not remand for further damages calculations, but only for entry of judgment in an additional amount of \$17,021,742.

VI.

Yankee Atomic's claims for wet storage pool costs and NRC fees were within this court's mandate in *Yankee II*. As such, the trial court's denial of these costs is reversed. The remainder of the trial court's decision is affirmed. Judgment should be entered to award Yankee Atomic Electric Co. an additional \$17,021,742.

AFFIRMED-IN-PART AND REVERSED-IN-PART

COSTS

Costs to Plaintiffs-Cross Appellants.



The Yankee Companies

Maine Yankee Atomic Power Company
321 Old Ferry Road
Wiscasset, ME 04578

Connecticut Yankee Atomic Power Company
362 Injun Hollow Road
East Hampton, CT 06424

Yankee Atomic Electric Company
49 Yankee Road
Rowe, MA 01367

Yankee Companies' Statement on Favorable Federal Court Ruling

On May 18, 2012 the U.S. Court of Appeals issued another favorable decision in the Yankee Companies' ongoing litigation over the U.S. Department of Energy's failure to remove Spent Nuclear Fuel (SNF) and Greater than Class C Waste (GTCC) from the three New England single-unit decommissioned nuclear reactor sites as required by contract and the Nuclear Waste Policy Act beginning in 1998. Total damages awarded to the three companies were nearly \$160 million.

Wayne Norton, President of CYAPCO and YAEC and Chief Nuclear Office of MYAPCO, said, "We are very pleased with the US Court of Appeals decision which is good news for the ratepayers of the three Yankee Companies. We urge the federal government to fulfill its commitment to remove the spent nuclear fuel and Greater than Class C waste from our sites without further delay and to stop pursuing a strategy of filing costly appeals that are not beneficial to ratepayers or taxpayers."

The Yankees won on all appellate points in the U.S. Court of Appeals for the Federal Circuit's unanimous decision. The Federal Appeals Court affirmed the September 2010 U.S. Court of Federal Claims award of \$39,667,243 to CYAPCO; affirmed the Court of Federal Claims award of \$81,690,866 to MYAPCO; and increased YAEC's damages award from \$21,246,912.55 to \$38,268,654.55. In YAEC's case the Appeals Court agreed with Yankee Atomic's position that the Court of Federal Claims had erred in excluding wet pool storage related costs from the damages award. The Court of Appeals also ruled that no further remand back to the Court of Federal Claims was required so the May 18 judgment reflects a final award of damages in a lawsuit originally filed over a decade ago - unless the federal government files yet another appeal.

"While the favorable decision in the Yankees' cases does not remove the spent nuclear fuel and GTCC waste from our sites, we are encouraged by the January 26 final report of the Blue Ribbon Commission on America's Nuclear Future and support the Commission's recommendations, especially those calling for the prompt priority removal of spent nuclear fuel from decommissioned reactor sites to consolidated interim storage at one or more volunteer sites," Norton said. The Yankee Companies are working with local, state, and national stakeholders in urging the Administration and Congress to move forward this fiscal year on consolidated interim storage and the associated transportation planning.

Background: To protect their rate payers, the three Yankee Companies first filed litigation in federal court in 1998 alleging that the federal government breached contracts entered into with each company in 1983 under the Nuclear Waste Policy Act. In October 2006 the U.S. Court of Federal Claims awarded the Yankee Companies approximately \$143 million in damages. The federal government appealed this ruling. In August 2008, a U.S. Court of Appeals panel vacated the Court of Federal Claims decision and remanded the case back to the Claims Court. A key finding of the Court of Appeals decision was that the awards in the 2006 decision needed to be



The Yankee Companies

Maine Yankee Atomic Power Company
321 Old Ferry Road
Wiscasset, ME 04578

Connecticut Yankee Atomic Power Company
362 Injun Hollow Road
East Hampton, CT 06424

Yankee Atomic Electric Company
49 Yankee Road
Rowe, MA 01367

Page 2 of 2

May 18, 2012

Yankee Companies' Statement on Favorable Federal Court Ruling

recalculated based upon a court-approved fuel pick up rate. In September 2010 the U.S. Court of Federal Claims issued another favorable decision, again awarding the Yankee companies approximately \$143 million. The federal government appealed that decision in November 2010.

On December 13, 2007, the Yankee Companies filed a second round of damage claims in the U.S. Court of Federal Claims. The damage claims are approximately \$135 for CYAPCO; \$86 million for YAEC; and \$43 million for MYAPCO. These numbers reflect the damages that CYAPCO and YAEC incurred from January 1, 2002 through December 31, 2008, and that MYAPCO incurred from January 1, 2003 through December 31, 2008. The trial was held in October 2011 and a decision in the case could be issued this year.

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NRC NEWS

U.S. NUCLEAR REGULATORY COMMISSION

Office of Public Affairs Telephone: 301/415-8200
Washington, D.C. 20555-0001

E-mail: opa.resource@nrc.gov Site: www.nrc.gov

Blog: <http://public-blog.nrc-gateway.gov>

No. 12-060

May 21, 2012

STATEMENT OF NRC CHAIRMAN GREGORY B. JACKZO

After nearly eight years on the Commission, I am announcing my resignation as Chairman of the U.S. Nuclear Regulatory Commission, effective upon the confirmation of my successor. My responsibility and commitment to safety will continue to be my paramount priority after I leave the Commission and until my successor is confirmed.

After an incredibly productive three years as Chairman, I have decided this is the appropriate time to continue my efforts to ensure public safety in a different forum. This is the right time to pass along the public safety torch to a new chairman who will keep a strong focus on carrying out the vital mission of the Nuclear Regulatory Commission.

During this last year alone, the agency has responded with an impressive focus on safety under my leadership to a number of diverse challenges including the accident at the Fukushima Da-ichi reactors in Japan, and a number of severe incidents at reactors in the United States ranging from flooding, an earthquake and tornados to damaged plant structures and steam generator problems. In addition to this vigilant oversight, together we identified and began to implement lessons learned from Fukushima and completed our rigorous safety reviews for the first new reactor licenses in 30 years.

Throughout my time on the Commission as both Chairman and Commissioner, the agency finalized regulations to ensure new reactors are designed to withstand an aircraft impact, completed the development and implementation of a safety culture policy statement, enhanced our focus on openness and transparency, and enhanced awareness of and worked to resolve some of the most long-standing generic issues facing the nuclear industry, including sump strainer issues and fire protection. Beyond the power reactor work, substantial progress was made in establishing a more transparent and effective oversight program for fuel cycle facilities. In addition, radioactive sources of concern are now fully protected with our new security regulations and source tracking system. We stand as a stronger and more decisive regulator now because of these years of efforts. I am truly humbled by the agency's success.

Serving the American people as the Chairman of the U.S. Nuclear Regulatory Commission has been an honor and privilege. The mission of this agency – protecting people and the environment, and providing for the common defense and security – could not be more clear, or more critical. Our collective focus on that mission was, I believe, one of the primary reasons the Nuclear Regulatory Commission was one of the best places to work in the federal government throughout my tenure. The highly talented and dedicated professional staff, including dozens who have served on my personal staff over the years, have been instrumental in fulfilling the agency's mission.

I will always be grateful for the opportunity of having served alongside the staff for all of these years, and for all that we accomplished together. I am looking forward to bringing all I have learned from my work and focus on safety at this agency with me as I move forward.

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News releases are available through a free *Listserv* subscription or by clicking on the EMAIL UPDATES link on the NRC homepage (www.nrc.gov). E-mail notifications are sent to subscribers when news releases are posted to NRC's website. For the latest news, follow the NRC on www.twitter.com/NRCgov.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11-1271

September Term 2011

NRC-NWPA

Filed On: May 21, 2012

In re: Aiken County, et al.,

Petitioners

State of Nevada,

Intervenor

BEFORE: Garland and Kavanaugh, Circuit Judges, and Randolph, Senior
Circuit Judge

ORDER

Upon consideration of the motion of the United States for a 21-day extension of time to file their brief, and the opposition thereto, it is

ORDERED that the motion be granted. The following revised briefing schedule will now apply:

Brief of the United States	June 22, 2012
Response of the Nuclear Regulatory Commission	June 29, 2012
Response of the Petitioners	July 6, 2012

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk



THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

May 25, 2012

To: Subcommittee on Environment and the Economy and
Subcommittee on Energy and Power

From: Committee Majority Staff

Subject: Hearing entitled "NRC Policy and Governance Oversight"

On Thursday, May 31, 2012, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Environment and the Economy and the Subcommittee on Energy and Power will conduct a joint hearing entitled: "NRC Policy and Governance Oversight." The hearing will focus on U.S. Nuclear Regulatory Commission (NRC) decisions and actions relating to licensing and policy making, as well as governance of the agency, in keeping with the Committee's jurisdictional responsibilities.

I. Witnesses

The five Commissioners of the NRC will present testimony on a single panel:

Gregory B. Jaczko, Chairman
Kristine L. Svinicki, Commissioner
William D. Magwood, Commissioner
George Apostolakis, Commissioner
William C. Ostendorff, Commissioner

II. Background

The safe and cost-effective development, operation, and maintenance of commercial nuclear power plants and materials is crucial to meeting America's energy needs, while ensuring the protection of public health and safety and the environment.

The Atomic Energy Act of 1954, as amended, provides for both the development and the regulation of the uses of nuclear materials and facilities in the United States. The Act establishes the policy that "the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition and private enterprise." Section 3 of the Act states "[i]t is the purpose of this Act to effectuate the policies set forth above by providing for . . . a program to

encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with health and safety of the public”

The NRC is an independent agency, established by Congress in the Energy Reorganization Act of 1974, to oversee the commercial nuclear industry pursuant to the Atomic Energy Act, as amended. In keeping with established policy, the NRC’s mission is “to license and regulate the Nation’s civilian use of byproduct, sources, and special nuclear materials to ensure adequate protection of public health and safety, to promote the common defense and security, and to protect the environment.”

The NRC operates with approximately 3,950 employees on an annual (FY 2012) budget of \$1,038 million. Of this amount, approximately \$910 million is recovered from fees assessed to NRC licensees. (The FY 2013 budget request is for \$1,053 million, to support 3,927 employees.) The Nuclear Reactor Safety Program, which encompasses NRC efforts to license, regulate, and oversee civilian nuclear power, accounts for approximately \$800 million of agency budget authority, and the work of roughly 3,000 employees. The Nuclear Materials and Waste Safety Program, which encompasses the agency efforts to license, regulate, and oversee nuclear materials and waste, accounts for approximately \$227 million in agency budget authority, and 870 employees.

The NRC is headed by five Commissioners, appointed by the President and confirmed by the Senate for five-year terms. The President designates one of the Commissioners to serve as Chairman. Under the legal framework for Commission governance and operation set out in the Energy Reorganization Act of 1974 and the Reorganization Plan No. 1 of 1980, the Commission is responsible for policy formation, rulemaking, adjudications, and adjudicatory orders.

Pursuant to statute, and as established in Internal Commission Procedures, the authorities of the Commission are exercised in a collegial manner; each Commission member has equal authority in all Commission decisions and is to have equal (prompt and full) access to all agency information pertaining to Commission responsibilities. By statute, the Chairman is the official spokesman of the agency and is the principal executive officer for the Commission, responsible for administrative functions of the agency. The Chairman is governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

In addition to its ongoing safety oversight and licensing activities, the NRC has been notably focusing on “lesson learned” from the consequences of the Fukushima Daiichi nuclear accident in Japan. Following the incident, the NRC established a task force to recommend orders and regulatory reforms to apply to U.S. operating reactors. The Commission is presently implementing various actions in response to the task force recommendations.

III. Issues

Issues to be examined at the hearing may include:

- Commission decision-making relating to nuclear power reactor licensing and re-licensing;
- Commission efforts to ensure safe operation of generating stations;
- Response to events at the Fukushima Daiichi nuclear power plant in Japan; and,
- Collegiality and information flow between senior NRC staff and Commissioners, and between the Chairman and fellow Commissioners.

IV. Staff Contacts

If you have any questions regarding this hearing, please contact Annie Caputo of the Majority Committee staff at (202) 225-2927.

BRIAN SANDOVAL
Governor

STATE OF NEVADA



COMMISSION ON NUCLEAR PROJECTS

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RICHARD H. BRYAN
Chairman

Commissioners:
Lawrence Brown
Michon Mackedon
Aurelia Roberts
Lois Tarkanian
Paul Workman

Robert J. Halstead
Executive Director

State of Nevada
POST
*****NOTICE OF PUBLIC MEETING*****
COMMISSION ON NUCLEAR PROJECTS

LOCATION: Clark County Government Center
County Commission Chambers, First Floor
500 S. Grand Central Parkway
Las Vegas, Nevada 89155

DATE AND TIME: May 31, 2012 – 1:00pm

Below is an agenda of all items to be considered. Action may be taken on items preceded by an asterisk (*).
Items on the agenda may be taken out of the order presented at the discretion of the Chairperson.

MEETING AGENDA

1. Call to Order – Senator Richard Bryan, Chairman
2. *Approval of minutes of the October 26, 2012 Nevada Commission on Nuclear Projects Meeting – Commission
3. Comments from the public.
4. Report from the Nevada Agency for Nuclear Projects, including: Update on the status of the Yucca Mountain program and developments since the last Commission meeting – Executive Director Robert Halstead
5. Report from the Nevada Attorney General's Office – Status of Litigation and Legal Issues – Chief Deputy Attorney General Marta Adams
6. *Commission request for the agency to generate the biannual Report and Recommendations of the Nevada Commission on Nuclear Projects to be presented to the Governor and Legislature of the State of Nevada - Commission
7. Comments from Affected Units of Local Government and Tribal Representatives
8. Comments from the Public
9. *Schedule next Commission on Nuclear Projects' meeting - Commission
10. Adjournment

Agendas posted at: Las Vegas and Carson City Governor's Offices; Capitol Building, Carson City; Legislative Counsel Bureau, Carson City; State Library and Archives Building, Carson City; Blasdel Building, Carson City; Attorney General's Office, Carson City; Clark County Government Center, Las Vegas; Las Vegas City Council Chambers, Las Vegas and www.state.nv.us/nucwaste/

We are pleased to make reasonable accommodations for members of the public who are disabled and would like to attend the meeting. If special arrangements for the meeting are required, please notify the Agency for Nuclear Projects at least one working day before the meeting at 775-687-3744.



Department of Energy
Washington, DC 20585

May 29, 2012

Dear Transportation Stakeholder:

I am writing to follow-up on the National Transportation Stakeholders Forum (NTSF) meeting that took place on May 15-17, 2012, in Knoxville, TN, as part of a week-long program of activities. On behalf of the Department of Energy's (DOE's) Office of Environmental Management and the NTSF Planning Committee, I would like to thank the 166 attendees from State Regional Groups (SRGs), Indian Tribes, State and Federal agencies, and other organizations whose participation helped to make the event a great success. I would also like to thank the Southern States Energy Board and their staff for all their hard work in hosting this forum.

We plan to continue offering an annual NTSF meeting and other opportunities (through webinars, ad hoc working committees, etc.) to maintain effective communications with our DOE transportation stakeholders. These communication methods will be used to assist our stakeholders in acquiring useful and timely information about DOE shipping campaigns and related issues, and to provide opportunities for feedback on questions, concerns, and expectations regarding federal radiological transportation policy and practices. This effort is expected to foster enhanced collaboration among affected parties and help ensure transparency and accountability for DOE's offsite radiological shipping activities.

Please visit <http://www.em.doe.gov/pages/NationalTransportationForum.aspx> for the NTSF Charter and other information. You can obtain detailed information about the May meeting and previous meetings from our website, including the agenda, presentation materials, summary notes, and contacts.

A primary goal of the NTSF Planning Committee was to solicit feedback from meeting attendees about the Forum's usefulness and how to improve future meetings along with determining priorities for planning webinars and establishing ad hoc working groups on key issues. For those purposes we used the Turning Point electronic evaluation system to engage participants during the NTSF meeting to answer a series of questions. Evaluation forms were also handed out for attendees to fill out. These mechanisms provide valuable input for the Planning Committee. The survey results are summarized below and are also available on the NTSF wiki site at <http://ntsf.wikidot.com/>:

Some of the highlights of responses received from attendees during the Turning Point survey were as follows:

- More than 57% felt the mix of plenary/panel sessions and breakout sessions was just right.
- More than 74% felt that the breakout sessions provided them with enough opportunities for discussion.
- More than 45% have visited the NTSF wiki site.
- More than 88% would be somewhat or very likely to read a quarterly NTSF newsletter.

At the NTSF meeting, participants were asked to identify the most important issues for the hoc working groups to address. The most popular topics selected were:

- SNF/HLW Transportation Planning Process (34.31%)
- Applying Consent-based Approach to Transportation (21.17%)
- Safeguards Information Training Module Development (16.06%)

The Planning Committee anticipates forming additional working groups over the next few months to begin addressing some of those issues, and will soon begin recruiting people to serve on the working groups. Please consider joining one or more of the groups.

The Committee will also be planning several webinars over the next year. We have considered the topics rated by the Turning Point survey process. The most popular suggestions were for webinars on:

- DOE's Plan for Implementing BRC Recommendations (28.73%)
- Route Selection: DOT Rail Routing Regulations and NRC Security Reviews (21.55%)
- NRC Update on Actions Taken to Support BRC Recommendations (17.68%)
- Candidate Storage Site Host Communities (17.68%)

New members for next year's Planning Committee will be discussing the 2013 NTSF meeting and will be providing more details in the months to come. Volunteers should work through their respective State Regional Group, or the National Conference of State Legislatures for tribes. The Northeast High-Level Radioactive Waste Transportation Task Force has volunteered to coordinate the next NTSF meeting, which is being tentatively planned for May 2013. We look forward to continuously improving and building effective relationships with each of you as our transportation stakeholders.

Sincerely,



Stephen C. O'Connor
 NTSF Chair
 Director, Office of Packaging and Transportation
 DOE Office of Environmental Management