OIG issues report on investigation into closeout of Yucca Mountain Project

The OIG has found that although NRC Chairman Jaczko’s actions to end the Yucca Mountain application review were within his authority, he was not forthcoming with the other commissioners about his intentions to shut down the project.
agement style and his control of the information flow within the NRC prevented the other commissioners from effectively fulfilling their statutory responsibility to address policy matters.

The OIG determined that Jaczko had used an FY 2011 CR budget guidance memorandum to initiate the NRC’s FY 2011 plans to close out the Yucca Mountain license application review, even though the FY 2011 budget had not yet been passed. His decision to direct the staff to follow the FY 2011 CR budget guidance was, according to the OIG, supported by the NRC’s general counsel and was consistent with (1) the discretion within his budget execution authority under the NRC’s Reorganization Plan, (2) government guidance to spend prudently during a CR period, (3) the Obama administration’s decision to terminate the Yucca Mountain Project, and (4) Jaczko’s interpretation of the NRC’s FY 2011 budget policy decisions, which articulated closeout activities.

On the other side of the coin, however, the OIG determined that although Jaczko had the authority to direct the staff to follow the FY 2011 budget guidance, “he was not forthcoming with the other commissioners about his intent to stop work on the SER [safety evaluation report] as part of implementing closeout activities.” This included stopping work on SER Volume 3, Review of Repository Safety After Permanent Closure, which the NRC staff believed to be near completion by the end of FY 2010.

“The chairman anticipated that proceeding to closeout in this manner could be controversial and viewed as a policy decision for full commission consideration. Therefore, prior to directing issuance of the CR budget guidance memorandum, he strategically provided three of the four other commissioners with varying amounts of information about his intention to proceed to closure and not complete SER Volume 3. He did not provide Commissioner [Kristine] Svinicki with any information about his intentions,” the report says.

The report also notes that although two of the three commissioners with whom Jaczko spoke did not fully understand the implications of the CR budget guidance memorandum, he told the NRC’s executive director of operations (and Jaczko’s chief of staff told the NRC’s chief financial officer) that “all of the commissioners were informed and supported the issuance of the CR budget guidance memorandum. “In fact, subsequent to the issuance of the CR budget guidance memorandum, a majority of commissioners disagreed with the outcome of the memorandum, which was [Jaczko’s] direction to stop work on SER Volume 3,” the report says. In addition, a majority of the commissioners did not think that the conditions to proceed to closure—i.e., through withdrawal or suspension—had been met, the report says.

The OIG also determined that after Commissioner William Ostendorff issued a commission action memorandum (COM) to the other commissioners, proposing that the staff be directed to continue its work on the SER, Jaczko communicated to Commissioners William Magwood and George Apostolakis that he expected their continued support to end work on the review process. According to the report, “[Jaczko] told them that he would not have directed issuance of the CR budget guidance memorandum had they not committed to support him.” Apostolakis and Magwood elected not to participate in voting on the COM, and without a majority, the commission was unable to move the matter from budget space (within the chairman’s purview), to policy space (within the commission’s purview).

The OIG also found that although the commission has in place internal procedures intended to facilitate collegial decision-making based on majority rule, adjudicatory voting procedures are not consistently en-
forced. In addition, written procedures do
not provide details on the process that oc-
curs between the completion of an adjudi-
catory paper vote and the conduct of an af-
firmation vote on the matter. “The lack of
enforcement of and specificity in the com-
mission’s written procedures, coupled with
the commission’s practice not to move to af-
firmation until all commissioners agree to
the affirmation notice and order, allows mat-
ters to sit in abeyance without final com-
mission action,” the report says.

The OIG determined that Jaczko controls
the information provided to the other com-
missioners, based on his interpretation of
his statutory authority as chairman versus
the authority given to the commission. “Be-
cause he acts as the gatekeeper to determine
what is a policy matter versus an adminis-
trative matter,” the report says,” and man-
ages and controls information available to
the other commissioners, they are uncertain
as to whether they are adequately informed
of policy matters that should be brought to
their attention.” The report concludes, how-
ever, that ultimately, all commissioners
have the ability to bring what they perceive
as policy matters before the commission by
writing a COM and gaining majority com-
mission support.

Jaczko, for his part, chose to focus on the
OIG’s finding that he had acted within his
authority to terminate the Yucca Mountain
review process. In a June 8 statement, Jaczko
said, “The U.S. Nuclear Regulatory Com-
misson’s Inspector General conducted a
comprehensive review of the agency’s han-
dling of the high-level waste program. The
conclusions of the report reaffirm that my ac-
tions have been and remain consistent with
established law, guidance, and my authori-
ties as chairman. With the IG report now
completed, we can all move forward with
a renewed commitment to ensuring pub-
lic health and safety in the use of nuclear
materials—the essential mission of the NRC.”

Jaczko added, “The closeout of the Yuc-
ca Mountain license review has been a com-
plicated issue, with dedicated and experi-
enced people holding different viewpoints.
All NRC chairmen have the responsibility
to make difficult and sometimes controver-
sial decisions. The IG plays an important
role in enabling the American people to
continue to have confidence that my focus
as chairman—and the entire agency’s fo-
cus—is on effectively carrying out the
NRC’s vital safety mission. Thus, I appre-
ciate the thoroughness with which the IG
and his staff conducted this comprehensive
review over the last seven months.”

As of this writing, the OIG’s 46-page re-
port was not available on the NRC’s Web
site, but it was available on the House En-
ergy and Commerce Committee’s Web site,
at <http://republicans.energycommerce.
house.gov/Media/file/Hearings/Environment/
061411/IGREPORT.PDF>.