



YUCCA MOUNTAIN

OIG issues report on investigation into closeout of Yucca Mountain Project

NUCLEAR REGULATORY Commission Chairman Gregory Jaczko may have acted within his authority to end the agency's review of the Department of Energy's Yucca Mountain repository license application, but he kept the other commissioners in the dark as he went about it, according to the NRC's Office of the Inspector General.

On June 6, the OIG released a report on the findings of its seven-month investigation into allegations that Jaczko had acted "unilaterally and improperly" to close out the NRC's Yucca Mountain license review

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.

process while the government was operating under a fiscal year 2011 continuing resolution (CR). The OIG also looked into claims that Jaczko purposely prevented the NRC

from completing its ruling on an Atomic Safety and Licensing Board's decision to deny the DOE's motion to withdraw the license application, and that Jaczko's man-

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



Jaczko

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 occurs between the completion of an adjudicatory paper vote and the conduct of an affirmation vote on the matter. “The lack of enforcement of and specificity in the commission’s written procedures, coupled with the commission’s practice not to move to affirmation until all commissioners agree to the affirmation notice and order, allows matters to sit in abeyance without final commission action,” the report says.

The OIG determined that Jaczko controls the information provided to the other commissioners, based on his interpretation of his statutory authority as chairman versus the authority given to the commission. “Because he acts as the gatekeeper to determine what is a policy matter versus an administrative matter,” the report says, and manages 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, however, 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 commission 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 Commission’s Inspector General conducted a comprehensive review of the agency’s handling of the high-level waste program. The conclusions of the report reaffirm that my actions have been and remain consistent with established law, guidance, and my authorities as chairman. With the IG report now completed, we can all move forward with a renewed commitment to ensuring public health and safety in the use of nuclear materials—the essential mission of the NRC.”

Jaczko added, “The closeout of the Yucca Mountain license review has been a complicated issue, with dedicated and experienced people holding different viewpoints. All NRC chairmen have the responsibility to make difficult and sometimes controversial 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 focus—is on effectively carrying out the NRC’s vital safety mission. Thus, I appreciate 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 report was not available on the NRC’s Web site, but it was available on the House Energy and Commerce Committee’s Web site, at <http://republicans.energycommerce.house.gov/Media/file/Hearings/Environment/061411/IGREPORT.PDF>. **NW**