

NOT FOR PUBLIC DISCLOSURE



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

March 30, 2011

CHAIRMAN

The Honorable Darrell E. Issa
Chairman, Committee on Oversight
and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

You asked in a March 11, 2011 letter for a significant number of U.S. Nuclear Regulatory Commission (NRC) internal documents including draft pre-decisional versions of Volume III of the Safety Evaluation Report (SER) for the Yucca Mountain license application, as well as adjudicatory information associated with that proceeding. The former is a document that not even my fellow Commissioners or I have had access to in an un-redacted form, and the confidentiality of the latter is crucial for deliberations to be able to be held in an environment free from political interference. Providing you with this type of information is inconsistent with decades of established Commission practice designed to preserve the agency's fundamental ability to conduct fair and impartial deliberations.

Although I do not believe it is appropriate to provide the draft predecisional partial SER, a majority of the Commissioners are willing to do so with the understanding that it is being provided for your use but not for public release. Therefore, that document is provided in a sealed enclosure to this letter. Drafts of our technical review documents are typically not released publicly because they state only the preliminary, rather than final, staff findings. Until they are fully vetted by the NRC staff, the findings cannot be the basis for any regulatory positions taken by the NRC staff. The draft predecisional SER document is not currently part of the official hearing record. The staff determined that the draft did not meet the criteria for inclusion in the Licensing Support Network, a determination which the Licensing Board has asked the staff to explain. Any unauthorized public release of this document would establish a dangerous precedent, setting the agency up to provide potentially incorrect or misleading information to the public, and to litigate multiple draft positions in our hearing process. This would result in an inappropriate and unworkable licensing process for everything from license renewals for operating reactors to the potential licensing of new reactors and other facilities.

The impropriety of Congressional influence over matters which are the subject of agency adjudications was explored in *Pillsbury v. FTC*, 354 F.2d 952 (5th Cir. 1966), which established what is commonly referred to as "the Pillsbury doctrine." That doctrine established that parties to adjudications have the right to hearings that are not tainted by Congressional interference. To avoid Congressional pressure on agency decision-makers that could impermissibly taint an administrative adjudication, the Commission does not generally respond to requests for information regarding adjudicatory matters. In this politically charged proceeding, I believe that any disclosure beyond your staff of the redacted portions of the draft SER would taint the high-level waste proceeding because of the multiple number of parties and a possible appearance of an effort to exert political influence to force the agency to disclose draft findings still subject to senior staff review.

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It is important that there is complete and accurate information released about the facts of this matter, not draft or incomplete documents. My hope for the sake of the efficiency of all the agency's ongoing and future licensing actions and the integrity of this specific hearing, is that you and your staff will respect these concerns about established safeguards to the deliberative process, and not take any action that could set a dangerous precedent going forward.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. B. Jaczko', with a long horizontal flourish extending to the right.

Gregory B. Jaczko

Enclosure: As stated

cc: Representative Elijah E. Cummings