

REVISED on March 1, 2011, to correct NRC Form 757, Section C, to reflect three staff members' non-concurrences and their requests that their non-concurrences be made public

February 4, 2011

MEMORANDUM TO: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: Catherine Haney, Director /RA/
Office of Nuclear Material Safety and Safeguards

SUBJECT: UPDATE ON THE YUCCA MOUNTAIN PROGRAM

The purpose of this memorandum is to describe the status of the Yucca Mountain Program. Since October 1, 2010, the U.S. Nuclear Regulatory Commission (NRC) staff's activities have focused on the orderly closure of the NRC staff's safety review of the license application submitted by the U.S. Department of Energy (DOE) for authorization to construct a geologic repository at Yucca Mountain (YM), NV. This memorandum also describes the staff's plans to capture the knowledge it acquired during more than 3 decades of pre-licensing preparation and more than 2 years of licensing review activities.

Program Status and Termination of Safety Review

Effective on October 1, 2010, the staff ceased its safety review of the YM license application. Consequently, the staff is converting the remaining volumes of its safety evaluation report (SER) ("Volume 3: Review of Repository Safety after Permanent Closure," "Volume 2: Review of Repository Safety before Permanent Closure," and "Volume 4: Review of Administrative and Programmatic Requirements") into technical evaluation reports, which will be published as NUREG reports in the knowledge management series. These reports will document the staff's technical review activities and technical conclusions but will contain no staff findings of regulatory compliance.

Knowledge Capture and Orderly Closure of Supporting Licensing Proceedings

The NRC staff is archiving the institutional, regulatory, and technical knowledge amassed over nearly 3 decades as it evaluated YM and other potential sites for deep geologic disposal of spent fuel and high-level waste. The staff is evaluating and documenting the lessons learned from (1) the development and implementation of site-specific regulations and guidance documents for geologic disposal, (2) the conduct of a licensing proceeding under Subpart J,

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"Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository," of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," and (3) the establishment and the operation of the Licensing Support Network (LSN). The staff will preserve this knowledge as a resource for future use. Associated with this, on October 1, 2010, the staff directed the Center for Nuclear Waste Regulatory Analyses (CNWRA) to stop its license application review activities. The staff redirected CNWRA to focus its YM-related efforts on the preservation of knowledge and records management. As the High Level Waste (HLW) repository knowledge management tasks are completed, CNWRA will transition to non-HLW Repository work using fee-based resources to evaluate the safety and environmental impacts of longer term storage of spent nuclear fuel and to support the staff's development of a longer term waste confidence rulemaking plan.

The NRC staff established priorities for activities it will undertake commensurate with available resources and closure of the licensing review. As part of this effort, the staff will document its technical review of the license application in technical evaluation reports (NUREGs). These reports will capture the scientific findings, knowledge, and experience of the staff's technical review, the development of requests for additional information, and an evaluation of the license application without stating the conclusion that would be needed to support a licensing decision. The first of these, documenting postclosure review activities, is planned for completion in the second quarter of fiscal year (FY) 2011. Resources permitting, reports on the staff's preclosure (Volume 2) and administrative (Volume 4) reviews will follow later in the third and fourth quarters of FY 2011.

During the first quarter of FY 2011, the staff established its process for developing the technical evaluation reports and began preparation of those reports. The staff is responding to a Freedom of Information Act request for access to staff drafts of SER Volumes 2 and 3. Technical staff members continued to provide input to the Office of the General Counsel on adjudicatory hearing-related matters to assist in responding to orders from the Construction Authorization Board 4 (CAB4 or the Board), including directives on case management and identification of witnesses. Departing and other senior technical staff members were interviewed on videotape for knowledge capture and as a future training resource. Personnel from the Office of Administration and the Atomic Safety and Licensing Board Panel (ASLBP or the Panel) initiated discussions with the General Services Administration and other government agencies about preparatory activities to close and decommission the Las Vegas Hearing Facility (LVHF), including its computer systems, physical infrastructure, and physical security infrastructure. During this period, the high-level waste core group continued discussions about the budget for orderly closure of the YM program to ensure coordination with preparation for renewal of the CNWRA contract and other contractual matters.

Hearing Process and Activities

CAB4 has continued to preside over the YM proceeding after denying the Department of Energy license application withdrawal motion in June 2010. The NRC staff, as required, has kept the Board informed of the status of the staff's application review activities. Specifically, on

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November 29, 2010, the staff informed CAB4 that it would not issue SER Volume 3 in November 2010 as previously planned, and that a revised schedule is indeterminate. On December 8, 2010, CAB4 ordered the staff to submit by December 22, 2010, a full explanation of its schedule change for the issuance of Volume 3 and directed the parties to confer and seek to reach agreement on a discovery status report by January 25, 2011. The staff replied on December 22, 2010, also indicating that the schedule for SER Volumes 4 and 2 was indeterminate. On December 14, 2010, CAB4 ruled on the Phase 1 legal issues and denied petitions for rule waivers. The Board also directed affected parties to submit a joint stipulation, or differing views, regarding the effects of the Board's Phase 1 legal issue rulings on admitted contentions by January 21, 2011. The major parties (including the NRC staff) timely responded and also filed differing views. In addition, DOE filed a January 21, 2011, motion seeking a suspension of the proceeding through May 20, 2011 and Nevada filed a January 20, 2011, motion seeking reconsideration of the rejection of a contention in its initial petition. CAB4 has not yet ruled on the suspension motion.

Absent contrary direction it is our understanding that the Panel plans to maintain the adjudicatory infrastructure for the repository licensing proceeding, including the Las Vegas Hearing Facility (LVHF), the Licensing Support Network (LSN), and the LVHF component of the Digital Data Management System (DDMS), until the end of FY 2011. At that time shut-down of the infrastructure would need to be accomplished to avoid the agency requiring Nuclear Waste Fund (NWF) money that has not been appropriated in order to complete the shut-down after FY 2011. We understand that ASLBP plans to send a memorandum in February that discusses this matter more fully and includes key action points for an orderly shutdown.

Resources

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Coordination

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

Three staff members in NMSS filed non-concurrences on this memorandum (Enclosures 2-4). These non-concurrences are included in the interest of providing the Commission with alternative views.

This paper contains pre-decisional procurement and budget information and should be withheld from public disclosure.

Enclosures:

1. [
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2. Non-Concurrence dated January 18, 2011
3. Non-Concurrence dated February 1, 2011
4. Non-Concurrence dated February 2, 2011

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Enclosure 1

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