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June 30, 2008

NWSC Update

Congressional Activities

Nuclear Waste Disposal Program: The House Appropriations Committee approved on Wednesday, June 25 the Administration's request of \$494.5 million for the nuclear waste disposal program (Program) for fiscal year (FY) 2009 -- \$247.3 million from the Nuclear Waste Fund (NWF) and \$247.2 million for Defense Nuclear Waste Disposal. The House has routinely supported full funding for the Program whereas the Senate has routinely reduced the funding that has affected the Program's progress.

In April 2008 presentations before the House and Senate Appropriations Committees, Ward Sproat, Director of Department of Energy (DOE), Office of Civilian Radioactive Waste Management (OCRWM), reminded the Committees the significant management challenges the Program has faced due to cutbacks by Congress, \$100 million in FY 2007 that resulted in reduction of approximately 900 personnel and a reduction of \$108.1 million in the FY 2008 budget request that has resulted in the best achievable opening date of the permanent repository slipping from March 2017 to 2020.

Consequently, DOE estimates U.S. taxpayers' potential liability to nuclear contract holders will increase from approximately \$7 billion to approximately \$11 billion if the permanent repository opening is delayed from 2017 to 2020. Sproat stated that the calculation of potential costs to taxpayers is a complex matter that depends on a number of variables changing year to year, estimating on average the liability will increase \$500 million annually. The DOE have not calculated costs of delay to 2020 and beyond, nor has it yet estimated costs for further delay associated with keeping defense waste sites open longer than originally planned.

Sproat encouraged Congress to pass legislation submitted by the President, proposing to fix the annual funding problem by reclassifying mandatory NWF annual receipts as discretionary, in an amount equal to appropriations from the NWF for authorized waste disposal activities. Funding for the Program would still have to be requested annually by the President and appropriated by Congress from the NWF.

Global Nuclear Energy Partnership (GNEP): No funds were provided for GNEP which the Appropriations Subcommittee described as, "counterproductive, poorly designed, and poorly executed." However, \$120 million was provided for the Department's Advanced Fuel Cycle Initiative, which includes the development of advanced reprocessing technology.

The House Appropriations Committee increased the DOE's budget request from \$31.187 billion to \$33.265 billion. This represents an increase of \$2.078 billion above the President's budget request, and \$2.377 billion above the amount appropriated in FY 2008.

Strengthening Management of Advanced Recycling Technologies Act, (SMART): On Friday, June 27, Senator Pete Domenici (R-NM) introduced S. 3215 a bipartisan legislation that would partner government and industry to develop privately owned storage and recycling facilities.

According to Senator Domenici, the bill would not end the Yucca Mountain project that could store military nuclear waste and other material that cannot be recycled. SMART proposes an establishment of a 50-50 cost share partnership between DOE and private industry to finance engineering and design work for up to two spent nuclear fuel (SNF) facilities - one in the East and one in the West – while reprocessing plants are licensed and built nearby.

S.3215 allows access to the \$20 billion of the NWF. The bill establishes a \$1 billion revolving fund to include receipts from the annual interest on the NWF. The revolving fund will allow projects to proceed without the need for annual appropriations from Congress.

The bill is cosponsored by Senators Sessions (R-AL), Murkowski (R-AK), and Landrieu (D-LA).

Department of Energy (DOE)

Legal Services: The Department of Justice (DOJ) has raised questions why neither DOE nor Morgan Lewis consulted with or notified DOJ before they entered into an agreement regarding the legal services handling the license application before the NRC.

The DOJ has the authority to block the contract. It is unclear whether DOJ might be contemplating action at this time. The concern is that Morgan Lewis represents several utilities who are litigating DOE for missing its 1998 deadline to remove SNF and HLRW from nuclear plant sites. DOE contends that it had obtained a waiver before it hired Morgan Lewis. Morgan Lewis stated that it erected firewalls to shield its lawyers handling nuclear waste projects.

Nevada requested the NRC to disqualify Morgan Lewis from handling the license application. On June 5, 2008, the NRC rejected NV's claims that Morgan Lewis's actions on behalf of DOE for the Yucca Mountain licensing "could harm the interests of its Standard Contract clients and vice versa."

Management and Operating Contract: In May, the DOE issued a Request for Proposals (RFP) for a Management and Operating (M&O) contract supporting OCRWM's Yucca Mountain project. The DOE will be relying heavily on the M&O contractor as it moves the Yucca Mountain project forward through the licensing phase and beyond. Key activities under the new M&O will include:

- Providing management expertise and support for the completion of repository design.
- Addressing questions or request for additional information from the NRC during the license application process.
- Operating the Yucca Mountain site, and
- Providing construction management and integration support.

Proposals to the RFP are due on July 14, 2008. The current contract runs through March 2009. It was last competed in 2000 and awarded to Bechtel, SAIC.

Transportation, Aging and Disposal System (TAD): On May 21, the DOE announced that Areva Federal Services and NAC International were awarded contracts for the design, licensing, and demonstration of the TAD canister system. The two contacts have a value of approximately \$13.8 million and each have a term of up to five years.

The DOE estimates that up to 90 percent of the spent nuclear fuel (SNF) received at Yucca Mountain will arrive in TAD canisters that will be permanently sealed at utility sites. Any spent fuel not transported in TADs will be placed in TADs upon arrival at Yucca Mountain. It is estimated that the TAD canister could be commercially available as early as 2013, will meet the NRC's requirements for storage and transportation of SNF, as well as DOE's technical requirements for long-term waste isolation during disposal.

According to DOE, the TAD-based approach eliminates the need for construction of multi-billion dollar facilities for handling SNF at the permanent repository. The TAD canister concept will also minimize the need for repetitive handling of SNF by using the same canister from the time it leaves a nuclear power plant and it is received at Yucca Mountain.

Supplemental Environmental Impact Statements: To conform with the submittal of the license application to the NRC, DOE issued in June the:

- 1) Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of SNF and HLRW at Yucca Mountain, Nye County, NV (DOE/EIS-0250F-S1).
- 2) Final Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of SNF and HLRW at Yucca Mountain, Nye County, NV – Nevada Rail Transportation Corridor (DOE/EIS-0250F-S2), and
Final Supplemental Environmental Impact Statement for a Rail alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, NV (DOE/EIS-0369).

In preparing the NEPA analyses, DOE took into consideration written comments. Comments submitted by the NWSC found no basic disagreement with recommendations made in the DOE's analysis. (See January 25 NWSC Update).

The Safety of a Repository at Yucca Mountain: Upon submittal of its license application to the NRC, the DOE issued a safety report summarizing an overview of the evidence, analyses, and conclusions that quantify and substantiate the DOE's position that the repository. The report concludes that the permanent repository will be safe during operations and after closure, beyond the time when active control of the facility is needed or can be relied on, together with a summary of the safety findings.

The document discusses the safety of the repository in two time frames: (1) During the operation of the repository, while material is shipped to Yucca Mountain, packaged and placed underground, and monitored; and (2) after the repository is permanently closed.

For further details visit: www.ocrwm.doe.gov.

Nuclear Regulatory Commission (NRC)

License Application (LA): The filing of the LA on June 3 by the DOE to the NRC marked a major milestone in the progress of the Yucca Mountain permanent repository. According to the NRC, the agency has scheduled 90 days to review the LA for acceptance, which requires administrative checks. If accepted, the application will be docketed and the NRC will publish a notice of hearing in the Federal Register around September/October timeframe. Thereafter, the timeline is approximately as follows:

- November 2008: Potential parties submit requests to participate in the hearings. Petitions include initial contentions.
- January 2009: Licensing board rules on hearing participation requests.
- June 2010: Discovery between parties is complete. Licensing board finalizes issues to be litigated and sets a schedule for hearings.
- October 2010: Hearings begin.
- January 2011: Hearings end.
- May 2010: Licensing board makes initial decision on whether to grant construction authorization.
- July 2011: NRC commissioners complete supervisory review of the licensing board's decision and issue construction authorization.

During a “Walk Through” briefing on Thursday, June 19, Ward Sproat, Director, DOE/OCRWM, explained to the NRC staff the layout and organizations of the 8,600 page LA. During the meeting, Sproat expressed confidence that DOE has met the NRC's acceptance criteria in terms of a high quality, complete and accurate LA.

On June 4, Nevada's Attorney General Cortez Masto filed a petition asking the NRC to reject the LA on a number of issues:

- The lack of the final radiation standards. ***(The radiation standards are being reviewed by Office of Management and Budget, Office of Regulatory Affairs.)***
- The absence of the final design for the repository.
- The absence of the final design for the canister system intended to store, transport and dispose of SNF.
- The drip shields designed to delay corrosion of canisters that will not be installed until 100 years after the material is buried.

The LA contains classified information, relating to naval fuel, which DOE separated in its Safety Analysis Report. However, NV asserts that DOE is keeping some elements of the project secret even from Nevada officials with security clearances.

The Nevada congressional delegation submitted a letter on April 30 to the NRC requesting an extension to present petitions and contentions after the application is docketed, requesting 180 days for petition and contention submissions. The current NRC's guidelines provide parties with 30 days.

License Support Network (LSN): On June 17, 2008, the NRC's Pre-License Application Presiding Officer (PAPO) Board denied Nevada's motion to strike DOE's initial LSN certification. The Board also denied Nevada's motion to file a limited reply brief.

In December 2007, the PAPO board turned down both Nevada's argument for decertification and its request to submit a brief further explaining its opposition. Rejection of Nevada's appeal ensures that the licensing process can now proceed.

Increase of Licensing, Inspection and Annual Fees: The NRC has amended its regulations it will charge for licensing, inspection and annual fees in FY 2008.

The agency is required by Congress to recover most of its annual appropriated budget through two types of fees. One is for specific NRC services, such as licensing and inspection activities; this fee is calculated using the current hourly rate multiplied by the time spent by staff performing the service. The other is an annual fee paid by licensees, which recovers generic regulatory expenses and other costs not recovered through fees for specific services.

By law, the NRC must recover through fees 90 percent of its budget authority for FY 2008 (Oct. 1, 2007 - Sept. 30, 2008), less the amounts appropriated from the NWF for high-level radioactive waste activities and from general funds for waste-incident-to-reprocessing and generic homeland security activities. The total amount to be recovered in FY 2008 is approximately \$779.1 million, about \$109.8 million more than in FY 2007.

The FY 2008 proposed fee rule, published on June 6 in the *Federal Register*, includes fees based upon the Consolidated Appropriations Act of 2008. The NRC's hourly rate (for both Nuclear Reactor Safety program and the Nuclear Materials and Waste Safety Program) is \$238 for Part 170 activities. This represents about an 8% decrease from FY 2007 of \$258 per hour. The decrease is primarily due to efficiencies created in estimates of direct staff hours worked annually per direct full time equivalent that is used in the hourly rate calculation.

NRC estimates that the FY 2008 annual fees will be paid by 104 nuclear power plant licensees, 4 non-power reactors, 19 spent fuel storage/reactor-in-decommissioning facilities, 11 fuel cycle facilities, 7 uranium recovery facilities and approximately 4,400 material licensees.

First-of-a-Kind Memorandum of Understanding (MOU): On June 17, the NRC and the Prairie Island Indian Community (PIIC) signed a MOU for working together to review potential environmental impacts of the proposed license renewal of the Prairie Island nuclear power plant located near Red Wing, MN. This is the first MOU dealing with a reactor license renewal environmental review.

The MOU describes each side's roles and responsibilities as the NRC leads the review of the application to renew the operating licenses for Units 1 and 2 at the Prairie Island Nuclear Generating Plant.

The MOU recognizes PIIC's special expertise and information as it relates to historic and archeological resources, socioeconomics, land use, and environmental justice. The NRC will give the community copies of technical reports, data and other information that fall under the PIIC's areas of interest, and the agency will give extra weight to the community's comments in those areas. NRC retains final authority on the renewal decision.

Global Nuclear Energy Partnership (GNEP)

Consortium Reports: DOE released recently detailed reports and presentations developed by four industry consortia (EnergySolutions; General Atomics; General Electric-Hitachi; and the International Nuclear Recycling Alliance, led by AREVA and Mitsubishi Heavy Industries), to inform the DOE on industry

perspectives regarding closing the nuclear fuel cycle in the United States. The reports describe conceptual designs, including cost and schedule for an initial nuclear fuel recycling center and advanced recycling reactor.

DOE/ Tennessee Valley Authority (TVA) Agreement: The DOE and TVA have agreed in a Memorandum of Understanding to collaborate and develop a concept for an advanced fuel-cycle demonstration project. The cooperation is part of the Administration's GNEP that seeks to expand nuclear development while reducing nuclear weapons proliferation and managing SNF.

Advanced fuel-cycle demonstration is a major component of GNEP, which is exploring next-generation technologies to close the nuclear fuel cycle. The partnership and development of a concept for an advanced fuel cycle demonstration project is supported by the nuclear industry's policy who is advocating an integrated used-fuel strategy.

For further details, go to: www.gnep.energy.gov.

Government Accountability Office (GAO) Report: According to the GAO's report GAO-08-483, released on May 22, DOE's original approach to the domestic component of GNEP, building engineering-scale facilities, would meet GNEP's objectives if the advanced technologies on which it focused can be successfully developed and commercialized.

The report further stated that advanced technologies would reduce waste to a greater degree than existing technologies by recycling radioactive material. The advanced technologies would also mitigate proliferation risks relative to existing technologies by increasing the difficulty of theft or diversion of weapons-usable nuclear material from recycling facilities. However, the GAO's report found DOE's engineering-scale approach had two shortcomings.

- (1) It lacks industry participation, potentially reducing the prospects for eventual commercialization of the technologies. In particular, the approach included some technologies that may introduce unnecessary costs and technical challenges while creating waste management challenges; and industry representatives have questioned whether such technologies could be commercialized.
- (2) DOE's schedule called for building one of the recycling facilities (a reprocessing plant for separating reusable materials from SNF and fabricating recycled fuel) before conducting research and development (R&D) on recycled fuel that would help determine the plant's design requirements. This schedule unnecessarily increased the risk that the spent fuel would be separated in a form that cannot be recycled. The other two facilities DOE had planned to build (an advanced reactor for using recycled fuel and an R&D facility) would allow DOE to conduct R&D that existing DOE facilities have limited capability to support.

DOE's accelerated approach of building full-scale facilities would likely require using unproven evolutions of existing technologies that would reduce radioactive waste and mitigate proliferation risks to a much lesser degree than anticipated from more advanced technologies.

Two of the four industry groups that have received funding under GNEP proposed evolutionary technologies for recycling spent fuel in existing reactors even though the GNEP strategic plan ruled out such technologies. While the evolutionary technologies could allow DOE to begin recycling a large amount of spent fuel sooner than under its original approach, fully meeting GNEP's waste reduction and nonproliferation objectives would require a later transition to more advanced technologies. Two other industry groups proposed technologies that

would address GNEP's waste reduction and nonproliferation objectives by using technologies that are not mature enough to allow DOE to accelerate construction of full-scale recycling facilities.

Under any of the proposals, DOE is unlikely to attract enough industry investment to avoid the need for a large amount of government funding for full-scale facilities. For example, the industry groups have proposed that DOE fund an advanced reactor, which DOE and industry officials expect would at least initially be more expensive than existing reactors to build and operate and thus not be commercially competitive. DOE acknowledges the limitations of its accelerated approach but cites other benefits, such as the potential to exert more immediate international influence on nonproliferation issues.

To download the report, go to: www.gao.gov and click on [GAO-08-483](#).

Lawsuits

Progress Energy vs DOE: The U.S. Court of Claims awarded Progress Energy \$82.8 million for costs the company incurred resulting from DOE's failure to remove SNF by January 31, 1998 from their nuclear power plants. Progress originally sought \$91 million from DOE for costs it incurred between January 31, 1998 and December 31, 2005, for installing spent fuel storage facilities at its North and South Carolina nuclear power plants and costs to transfer SNF between plants for storage.

The Department of Justice, which represented DOE, has 60 days to file an appeal of the May 19 decision. More than 60 lawsuits have been filed by utilities against DOE for the department's breach of contract to fulfill its statutory and contractual obligations.

National Conference of State Legislatures (NCSL)

The NCSL passed a resolution in May supporting development of one or two off-site interim storage facilities for SNF in volunteer communities.

The NCSL's policy change urges Congress to direct DOE to develop a plan to take custody of SNF stored at reactor sites. The state legislators recommend that Congress and DOE work with state and local governments and interested volunteer communities to bring about interim storage facilities. Also, the resolution urges Congress to redirect using a portion of the \$20 billion from the NWF to finance the interim storage facilities. The resolution also urges Congress to clarify DOE's role and responsibilities for moving SNF to the interim storage sites.

NWSC

Commissioner LeRoy Koppendraye: Commissioner Koppendraye retired on June 27, 2008, as Chairman of the Minnesota Public Utilities Commission and member of the NWSC Executive Committee.

As Chairman, Koppendraye successfully led the NWSC from 2001 through 2007 and continued to serve on the Executive Committee until June 2008. Koppendraye has made exceptional contributions to the growth of the NWSC over the past seven years.

Commissioner Koppendraye's hard work and dedication with a realistic approach to finding a solution to the nuclear waste disposal program impasse will be missed. We wish him the very best in his new life.

September 8-9 Meeting: The NWSC will be holding its next meeting on Monday and Tuesday, September 8-9 at the Madison Hotel, 1177 - 15th Street, N.W., Washington, D.C. A special group rate of \$279 per night (single or double - arrival September 7, departure September 9) has been negotiated with the hotel. The hotel guest room cut off date is: **FRIDAY, AUGUST 22**. Please make your hotel reservations prior to August 22 to obtain the special guest room rate. Meeting material attached.

DOE will be invited to discuss their perspective and future challenges to the nuclear waste disposal program for FY 2009 and beyond. Other discussions will include the necessity for continued funding not only for the license application but also for transportation and related issues, the need of a centralized interim storage, recycling facilities and the renaissance of nuclear energy as it relates to the Yucca Mountain program. We will also have an update on current lawsuits or other challenges facing the disposal program.

We will be visiting with key members of Congress or their staff to encourage full funding in the FY 2009 appropriations for the disposal program. Participation in these meetings is important.

Next Telephone Conference Call

- Please note that the next NWSC/NEI/NARUC telephone conference call will be held on **Wednesday, July 16, 2008, 10:00 a.m. ET, (9:00 a.m. CT)**.

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PARTIES IN YOUR ORGANIZATION**