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June 5, 2009

NWSC Update

Department of Energy

FY 2010 Budget: The Administration requested \$98.4M from the Nuclear Waste Fund (NWF) for the nuclear waste disposal program (Program) in its fiscal year (FY) 2010 budget, while the nation's ratepayers paid \$763M in FY 2008 into the NWF, according to the Department of Energy's (DOE) February 2009 Summary of Program Financial and Budget Information report. The defense portion of \$98.4M was also at its lowest level ever requested for defense nuclear waste disposal (DNWD).

The under funding continues to have an adverse impact to the overall progress of the Program. The new prime contractor, USA Repository Services, was forced to cut its workforce by 500 of its roughly 600 contract workers earlier this year. Additionally, Sandia National Laboratories, another participant in the Program with 332 personnel, has also been impacted by having to reduce its staff.

As of March 2009, the latest round of reductions has brought the project's personnel to fewer than 900, from a high of approximately 2,750 three years ago, according to DOE officials. Besides the prime contractor and Sandia National Laboratories, there are about 250 federal workers and smaller groups of support personnel. Consequently, virtually all remaining hands are focusing on inquiries from the Nuclear Regulatory Commission (NRC) as part of the license application review it has submitted and preparing for the NRC's Atomic Safety and Licensing Board Panel hearings.

It is reported that DOE is already lagging behind in answering the NRC's approximate 200 or so requests for additional information; DOE may have responded about half of these questions by now. It is speculated that even if Congress appropriates \$196.8M as requested by the Administration in its FY 2010 budget, DOE will be forced again to reduce its workforce; thus, it is doubtful that the license application review will be within 3-4 years as directed by the 1982 Nuclear Waste Policy Act, as amended (NWPA).

Global Nuclear Energy Partnership (GNEP): The Obama Administration announced in April that the domestic component of GNEP has been cancelled. According to DOE Deputy Press Secretary Jen Stutsman, "The long-term fuel cycle research and development program will continue but not the near-term deployment of recycling facilities or fast reactors. The international component of GNEP is under interagency review."

Consequently, Congress eliminated the GNEP, allocating only \$145M for research under the Advanced Fuel Cycle Initiative program.

Blue Ribbon Panel: As part of the President's campaign promise to Nevada to close down the Yucca Mountain permanent repository, Secretary Chu plans to convene a Blue Ribbon Panel Commission (Commission) to evaluate alternatives for the management and disposal of spent nuclear fuel (SNF) and high-level radioactive waste (HLRW) currently stranded at 121 sites in 39 states.

It was reported in the Nevada newspapers that Majority Leader Senator Harry Reid (D-NV) was promised by Energy Secretary Chu that the Commission will not review the Yucca Mountain permanent repository.

The NWSC has put together a group letter (attached), outlining several principles for consideration by Secretary Chu when convening the Commission. Some of the principles outlined in the letter are that all options should be on the table to include the geologic repository at Yucca Mountain, Nevada; the appointees should be unbiased and impartial; beyond reproach with expertise in the field; and provide fair, balanced and comprehensive recommendations with regards to the future of the Program.

The deadline for your organization's signature block is Friday, June 12. If you have not sent in your signature block, please do so as soon as possible.

Confirmations: The Senate unanimously confirmed in May the following six key positions within the DOE:

- Scott Blake Harris, General Counsel.
- Kristina Johnson, Under Secretary for Energy.
- Steven Koonin, Under Secretary for Science.
- Daniel Poneman, Deputy Secretary for Energy.
- David Sandalow, Assistant Secretary for Policy and International Affairs.
- Ines Triay, Assistant Secretary for Environmental Management.

Congressional Activities

Nuclear Waste Disposal Program (Program): Congress appropriated to DOE \$288.3M for FY 2009 for the Program - \$145.3M from the NWF and \$143M for DNWD.

The overall Program budget request for FY 2009 was \$494.7 million -- \$247.3M from the NWF and \$247.4M for DNWD. The FY 2009 appropriations of \$288.3M represent the lowest amount appropriations since 1984; \$275.9M was appropriated and all of the funds came from the NWF.

Nuclear Regulatory Commission (NRC): Ironically, Congress increased the NRC's FY 2009 budget by \$11.7 M, totaling \$49M in appropriations. The NRC requested \$37.3M from the NWF to review the DOE's license application.

National Commission on Nuclear Waste (Commission): Senator Jeff Bingaman (D-NM), Chairman, Senate Energy and Natural Resources Committee, is also proposing to convene a Commission on Nuclear Waste Management. The purpose of the Commission is to conduct a comprehensive study of alternative means of managing and disposing of SNF and HLRW from civilian and defense facilities.

According to the marked bill the commission shall be composed of 11 members appointed by the President among U.S. prominent citizens with national recognition and depth of experience in such professions as government service, public administration, natural or physical sciences, engineering and public health. The bill

excludes from serving on the Commission an officer or employee of the Federal Government or any State or local government. Further, the bill calls for independent advice and judgment and shall not be inappropriately influenced by any special interest.

Some of the Commission functions will be to study alternative waste management strategies to include a deep geologic repository; long-term storage of SNF and HLRW at plant sites; central interim storage facilities at one or more regional storage facilities; make recommendations to ensure that future efforts to site a permanent repository will be acceptable to the public and review of reprocessing and advanced fuel cycle programs. For further details on the Commission's duties, see attached report.

The Commission shall submit its final report to the President and Congress not later than 2 years after the date of enactment of this Act. \$3M will be transferred from the NWF for the Commission to carry out its mission.

Letter from the U.S. Senate: After only six weeks in office, Secretary Chu stated in a hearing that, "Yucca Mountain is not an option." Consequently, 17 Republican Senators wrote to the Secretary demanding to know what he has discovered in the few weeks as Secretary that disqualifies Yucca Mountain as the nation's repository after 25 years or so of scientific studies evaluating the repository.

They point out in their letter that since 1950, 55 studies have been conducted by the National Academy of Science (NAS), in addition to other studies carried out by the national laboratories and the international scientific bodies, evaluating options to nuclear waste disposal. Further, more than \$7.7B has been spent on scientific research on the Yucca Mountain site. The NAS, the Nuclear Waste Technical Review Board, or any of the national laboratories involved in the studies and evaluating data, have concluded that there is no evidence to disqualify Yucca Mountain as a permanent repository.

A set of questions were attached to the letter to include a request for a Record of Decision as to why, "Yucca Mountain is not an option." The deadline for their answers was Monday, June 1.

Letter from the U.S. House of Representatives: On May 7, Representatives Joe Barton (R-TX), Ranking Member, House Committee on Energy and Commerce and Ralph Hall (R-TX), Ranking Member, House Committee on Science and Technology also wrote to Energy Secretary Chu questioning why this Administration plans to abandon Yucca Mountain as the nation's permanent repository.

The Ranking Members pointed out that turning away from Yucca Mountain may have adverse consequences for the nation's taxpayers, would raise significant regulatory and legal issues, and the potential of higher liabilities presently estimated to be \$11B. They also questioned on what scientific and technical basis did Dr. Chu made his decision when he stated that, "Yucca Mountain is not an option."

Barton and Hall also asked whether the \$30B, include interest, collected in the NWF would be returned to the nation's ratepayers if this Administration abandons Yucca Mountain. The Ranking Members requested that the Secretary reply to their set of questions by no later than two weeks from the date of their letter. The deadline was May 21. It is unclear at this time whether the Secretary has responded to these letters.

Surface Transportation Board (STB).

The State of Nevada filed in April a Motion to *Suspend Further Proceedings or in the alternative, to Reopen the Procedural Schedule and Record of Previously Established for Public Comment on Public Convenience and Necessity Issues Related to the Application filed by DOE under 49 U.S.C. 10901.*

The purpose of this Motion was to have the STB suspend DOE’s application to build approximately 300-mile rail line from Caliente to the permanent repository site at Yucca Mountain.

The DOE responded that it opposes Nevada’s Motion for two basic reasons:

- 1) Nevada and all other interested parties have had ample opportunities – well beyond those prescribed by the regulations of the STB – to comment on DOE’s application.
- 2) The substantive arguments Nevada seeks to raise have all been raised before and either rejected already or taken under advisement for resolution in the STB’s final decision, or are simply beyond the scope of this proceeding.

Also, the Nuclear Energy Institute (NEI) filed a Motion stating that the State of Nevada’s Motion should be denied. The Motion further states that the NEI continues to support the DOE’s application, contrary to Nevada’s assertion that the NEI “has apparently conceded the death of the geologic repository.”

Nevada referenced in its filings an article issued by the *Energy Daily* entitled “Obama Strangling Yucca Mountain with Funding Cut.” Nevada claimed that in an “op-ed” article written by NEI’s President, Marvin Fertel, NEI conceded the death of the repository or supports the suspension of licensing for the Yucca Mountain repository.

The NEI responded that contrary to Nevada’s claims, the article was not written by Mr. Fertel. Mr. Fertel’s views were discussed at the end of the article but, it was nowhere suggested either by Mr. Fertel or NEI conceded the death of the repository or supports the suspension of licensing for the Yucca Mountain repository. The Motion states that Mr. Fertel clearly stated in the article that, “[l]icensing of the Yucca Mountain repository should continue,” and that any blue ribbon panel should be convened “[i]n parallel to licensing efforts.”

Nuclear Regulatory Commission (NRC)

FY 2010 Budget: The NRC requested in its budget \$1.07B to regulate nuclear power plants and other users of nuclear materials. The budget includes \$800M for nuclear reactor safety, \$205M for nuclear materials and waste safety, \$56M from the NWF for the permanent repository, and \$10M for the Inspector General. Compared to the FY 2009 budget, resources in FY 2010 for reactor safety increased by 1.5 percent, and materials and waste safety increased by 6 percent. The budget breakdown is as follows:

<u>Nuclear Reactor Safety - \$799.7M</u>		<u>Nuclear Materials and Waste Safety - \$261.2M</u>	
New Reactors	\$248.3	Fuel Facilities	\$49.5
Licensing Tasks	\$237.4	Nuclear Material Users	\$90.6
License Renewal	\$ 35.7	Decommissioning and Low-Level	\$37.3
International Activities	\$ 15.1	Waste	
Reactor Oversight	\$242.1	Spent Fuel Storage & Transportation	\$27.8
Incident Response	\$ 21.1	High-Level Waste Repository	\$56.0

By law, the NRC must recover, through fees to applicants and licensees, 90 percent of its budget authority, less the amounts appropriated from the NWF for HLRW activities and from general funds for waste-incident-to-reprocessing and generic homeland security activities. As a result, the NRC's FY 2010 budget request will be financed with approximately \$887.2M from user fees and the NWF, resulting in a net appropriation of approximately \$183.9M. This is an increase of \$9M over FY 2009.

DOE's License Application: The NRC's Atomic Safety and Licensing Boards (ASLBs) held a hearing in May on the Yucca Mountain license application, admitting eight petitioners as parties and a total of 299 contentions on safety and environmental issues.

The ASLBs, designated as "construction authorization boards," granted the petitions to intervene filed by the NEI; the states of Nevada and California; NV counties of Nye, Clark and White Pine; Inyo County, CA; and a joint petition filed by Churchill, Esmeralda, Lander and Mineral counties, NV. Eureka and Lincoln counties in Nevada were granted status as interested governmental participants.

The DOE submitted its application June 2008 for authorization to construct a geologic repository at Yucca Mountain. The Commission's notice of hearing was published in October, and in December, 12 petitions to intervene and 318 proposed contentions were filed with the ASLB. The boards, each consisting of three judges, heard oral arguments on standing of petitioners and admissibility of contentions in Las Vegas from March 31-April 2. The boards issued a combined order in May. Parties and petitioners not granted standing had 10 days to appeal the May 11 order to the Commission.

Proposed Variable Annual Fee Structure: The agency is in the process to amend its rule governing annual fees to establish a variable annual fee structure for nuclear power reactors based on licensed power limits. Current regulations governing annual fees require that each operating nuclear power reactor pay the same annual fee, regardless of the size of the reactors.

The NRC has determined that the current single annual fee structure for nuclear power reactors should be reviewed in light of the potential for future licensing of small and medium sized nuclear reactors, some of which may not be used to generate electric power, and some of which may be used and licensed in configurations of up to 20 reactors (modules). Although issuance of a license for a small or medium sized reactor which triggers imposition of fees may be several years in the future, this proposal invites early input from interested stakeholders and the public on the issues relevant to establish a variable annual fee structure for these reactors.

Licensing, Inspection and Annual Fees Rule: The NRC proposed in March to amend its regulations for the licensing, inspection and annual fees it charges applicants and licensees for FY 2009.

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, that apply to a specific license; the other is an annual fee paid that recovers generic regulatory expenses and other costs not recovered through fees for specific services. These fees are contained in NRC regulations 10 CFR Part 170 (fees for license-specific services) and 10 CFR Part 171 (annual fees).

The total amount of fees to be recovered by September 30 is approximately \$870.6M, about \$91.5M more than in FY 2008. The increase in FY 2009 fees is due primarily to an increase in reactor license renewals and new uranium enrichment and recovery licensing activities.

Approximately one third of the fees will be billed for specific services (Part 170) and the remaining two thirds will be billed to annual fees (Part 171). The hourly rate for Part 170 activities will increase about 8 percent from \$238 to \$257 per hour. Although proposed annual fees increase for most licensees, NRC will be reducing the fee for small entities. The proposed FY 2009 annual fees are categorized by types of licensees/applicants and include the following:

<u>Class/Category</u>	<u>FY 2009 Annual Fee</u>
<u>Operating Power Reactors (including Spent Fuel Storage/</u>	
Reactor Decommissioning annual fee)	\$4,735,000
Spent Fuel Storage/Reactor Decommissioning	\$127,000
Test and Research Reactors (Non-power Reactors)	\$124,500
High-Enriched Uranium Fuel Facility	\$4,721,000
Low-Enriched Uranium Fuel Facility	\$1,659,000
UF6 Conversion Facility	\$975,000
Conventional Mills	\$32,000
 <u>Typical Materials Users:</u>	
Radiographers	\$23,100
Well Loggers	\$9,900
Gauge Users (Category 3P)	\$3,800
Broad Scope Medical (Category 7B)	\$36,800

The NRC estimates that the FY 2009 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 3,800 material licensees.

Radiation Standards: The NRC approved earlier this year a final rule incorporating the Environmental Protection Agency’s (EPA) radiation protection standards for the proposed geologic repository at Yucca Mountain, for the period beyond 10,000 years and up to 1 million years.

The rule makes NRC’s regulations for the repository in 10 CFR Part 63 consistent with the EPA’s revised standards, as required by law. The EPA’s final standard was issued September 30, 2008. The EPA’s revised standards and the NRC’s rulemaking were required by the July 9, 2004, ruling of the U.S. Court of Appeals for the D.C. Circuit, which overturned EPA’s earlier standard that limited the compliance period to 10,000 years.

EPA published its proposed revisions August 22, 2005, and NRC published a proposed rule adopting EPA’s revisions and requesting public comment on September 8, 2005. The final rule retains EPA’s standard dose limit for individuals of 15 millirem for the first 10,000 years after disposal and adopts EPA’s 100 millirem dose limit for the period after 10,000 years and up to 1 million years.

NRC Chairman: The White House has named Gregory Jaczko as Chairman of the NRC. Jaczko has been serving as an NRC commissioner since January 2005. He also served as an appropriations director and science policy advisor to Senator Harry Reid (D-NV).

Jaczko succeeded Dale Klein who has served as chairman since July 2006. Klein has stated that he plans to serve the remainder of his term as a commissioner with the NRC, whose term ends in June 2011.

LAWSUITS

In May, the U.S. Supreme Court declined to hear a case that state utility regulators argue will greatly impact their ability to ensure that ratepayers are compensated for the government's failure to remove SNF and HLRW from nuclear power plants to the Yucca Mountain permanent repository. A situation the state regulators claim has increased electricity rates due nuclear utilities having to build interim storage facilities at plant sites.

On April 27, the high court denied certiorari in the case Delmarva Power & Light Company, et al. v. United States, et al., in which Delmarva had asked the U.S. Supreme Court to review a lower court's ruling that it cannot sue the DOE for what it argues is lost value on property in which it previously owned interest and where SNF was stored as a result of DOE's inaction.

The National Association of Regulatory Utility Commissioners (NARUC) had backed Delmarva's petition, arguing that if the ruling is allowed to stand, its "member State commissions' ability to protect the public interest will be undermined." NARUC said in a January 21 amicus brief, "it is precisely because of the probable impact that NARUC was directed by its members to file an amicus brief supporting Delmarva."

The Delmarva case stemmed from the company's past ownership of minority interests in some of nuclear power plants run by PSEG Nuclear and Exelon. In 1999, Delmarva sold its minority interests to PSEG and Exelon, and as part of the sale contracts, assigned all of their claims against DOE to those companies. Nonetheless, four years later Delmarva sued DOE in an attempt to recover damages for breach of a SNF disposal contract and for an alleged taking under the Fifth Amendment to the U.S. Constitution.

Delmarva "alleged that they had obtained a reduced purchase price for their minority interests because DOE's breach of contract had lowered the value of the nuclear plants, and that the reduction in the purchase price constituted a taking." The Department of Justice (DOJ), filing on behalf of DOE, opposed the U.S. Supreme Court review of the lower court's ruling.

Delmarva argued that an assignment of claims does not necessarily include takings claims, but the lower court rejected this argument, siding with DOJ that Delmarva transferred all of its potential claims, including takings claims to PSEG and Exelon.

Nuclear Waste Technical Review Board (NWTRB)

In a June 1 letter, Chris Kouts, Acting Director, DOE/Office of Civilian Radioactive Waste Management (OCRWM), responded to Dr. Garrick's April 6 letter which provided observations and suggestions on information presented by DOE during the January 28, 2009 meeting.

The NWTRB commented that DOE should conduct full-scale or near-full-scale thermo-mechanical testing of fractured lithophysal tuff to help validate the novel project models and estimates. The DOE disagreed that it would be beneficial to have additional data on the lithophysal rock portion of the repository in terms of response to thermal stresses after closure, because DOE has concluded that rock fall after closure of emplacement drifts in the lithophysal zone will not impact system safety or regulatory compliance.

The Board suggested that they would like to see the work planned to increase understanding in the area of burn-up credit carried to completion. The Board further suggested that the current fleet of Dual Purpose Canisters

(DPC) ought to be considered for direct disposal, and that prescribing loading strategies for new DPCs could minimize the criticality issue associated with DPC disposal.

DOE responded that burn-up credit and criticality safety are issues that cut across all areas of nuclear fuel management and handling and suggests that some of the planned OCRWM work in this area could be picked up by outside parties. The Board noted that the repository surface facilities will have the capability to reopen DPCs and move their contents into transportation, aging, and disposal (TAD) canisters. The Board further raised issues ranging from cost, efficiency, and worker safety perspective regarding the handling of DPC's which would require DOE to put in place a research effort. DOE responded that due to the current Administration's policy that Yucca Mountain is not a workable option, their budget constraints do not allow the implementation of such an effort.

The DOE's Idaho National Laboratory, and Bechtel-SAIC, LLC, were complimented for a job well done in demonstrating the prototype waste package closure weld robotic system. However, the Board questioned current plans to evacuate and inert the inner waste package with helium since the TAD canister, inside of which the waste is located, is sealed and already inerted with helium. The DOE agreed that this work was well done, and has led to significant insights that will be implemented, and was well worth the investment. Again, the Board was pleased to have an overview of the science work that is still in progress and recently completed by DOE. The Board made several suggestions for continued work in terms of monitoring the existing mined openings now, and in the future, perhaps with the resumption of the Science and Technology Program. Again, DOE responded that due to the current Administration policy that Yucca Mountain is not a workable option, their budget constraints does not allow the implementation of such an effort.

The Board expressed interest in the U.S. Geological Survey (USGS) work on the loss of nitrate from dust at elevated temperatures. The Board further stated that it was not convinced by DOE's argument concerning the low likelihood of forming corrosive brines, and the low likelihood of sufficient brine volumes to be meaningful from a corrosion perspective. The Board suggested that some additional laboratory work could be useful in addressing this question.

DOE responded that it considers its assessment concerning limited brine volumes to be justified and defensible. The NRC has asked a similar question posed by the Board concerning implications of the USGS work on nitrate to chloride ratios in dust, and this information can be viewed on the NRC's ADAMS database.

To obtain full details, go to: www.nwtrb.gov

Other

In May 2009, the Institute for 21st Century Energy/U.S. Chamber of Commerce, called on the Obama Administration to commit to a permanent solution for the nation's used nuclear fuel and nuclear waste. The report, titled *Revisiting America's Nuclear Waste Policy*, examines the nation's nuclear waste policies and the federal's government's failure to fulfill its statutory and contractual obligations.

"Yucca Mountain has been demonstrated to be the best solution under current law, but is by no means the only solution for managing America's nuclear waste," stated Christopher Guith, the Institute's Vice President for

Policy. “If the Obama administration and Congress plan to change course after 30 years of independent scientific review and billions in investment, they have a legal responsibility to the American people and utilities that have paid more than \$28 billion in fees and interest to immediately craft a workable long-term solution.”

The Institute also examines the scientific, economic, and security challenges in its report, and offers recommendations to the Obama administration and the U.S. Congress to safely manage the nation’s current and future nuclear waste.

Specifically, the report recommends that our national leaders consider the following priorities to put America on a long-term path for safe nuclear waste disposal, including:

- Move management of the nation’s waste plan from DOE to an outside entity—such as a government corporation—with access to the NWF.
- Begin siting and licensing centralized interim storage locations for used nuclear fuel and nuclear waste, which currently sit in 121 locations in 39 states, on DOE sites and/or other sites that have expressed interest in temporarily storing the used fuel.
- Close the nuclear fuel cycle to harness the energy in used fuel, lessen the volume of waste, and reduce security risks and determine what technologies and timelines should be employed.
- Fully fund the Yucca Mountain license application process and gain knowledge and insight into permanent repository.
- Evaluate the retrievability requirement in the NWPA for waste disposed in a permanent repository and consider other mediums and locations with fewer political, regulatory, scientific, or economic obstacles.
- Consider whether utilities should continue paying a nuclear waste fee and consider depositing the fees in a private escrow account.

The entire report may be viewed at: www.energyxxi.org.

Next Telephone Conference Call

Please note that the next NWSC/NEI/NARUC telephone conference call will be held on [Wednesday, June 10, 2009, 10:00 a.m. ET, \(9:00 a.m. CT\)](#). An agenda to follow.

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PARTIES IN YOUR ORGANIZATION**