

March 30, 2010

MEMORANDUM TO: Chairman Jaczko
Commissioner Klein
Commissioner Svinicki

FROM: R. W. Borchardt */RA by Martin Virgilio for/*
Executive Director for Operations

SUBJECT: PLANS FOR THE HIGH-LEVEL WASTE
REPOSITORY PROGRAM

The purpose of this memorandum is to inform the Commission of the U.S. Nuclear Regulatory Commission (NRC) staff's plans for its repository licensing review and the status of the infrastructure for the associated adjudicatory proceeding, in light of recent developments, including the allocation of Fiscal Year (FY) 2010 funding. In announcing the Administration's budget for FY 2011, on February 1, 2010, the President directed the U.S. Department of Energy (DOE) to "discontinue its application to the NRC for a license to construct a high-level waste geologic repository at Yucca Mountain in 2010...." On March 3, 2010, DOE filed a motion with Construction Authorization Board 4 (CAB4) to withdraw its license application for the proposed geologic repository.

Background

On June 3, 2008, DOE submitted the Yucca Mountain Repository License Application to the NRC seeking authorization to construct a geologic repository at Yucca Mountain, NV. On September 8, 2008, the staff accepted DOE's application for docketing and review. In response to a notice of hearing published in the *Federal Register* on October 22, 2008, intervention petitions were filed. In May 2009, two interested governments, eight parties, and nearly 300 contentions were admitted to the proceeding. In August 2009, two additional parties were admitted after satisfying Licensing Support Network (LSN) requirements. The allocation of FY 2010 funding is depicted in the pie chart in Enclosure 1. Enclosure 2 provides a revised schedule of tentative completion dates for Safety Evaluation Report Volumes.

Licensing Proceedings

On February 1, 2010, DOE moved for an interim suspension of discovery as well as a stay of most aspects of the construction authorization proceeding through the disposition of an additional motion (which DOE said it would file within 30 days) seeking to withdraw, with prejudice, its license application. On February 2, 2010, CAB4 granted DOE's unopposed request for an interim suspension of discovery, pending disposition of DOE's motion to stay.

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On February 16, 2010, CAB4 granted DOE's motion to stay the proceeding, pending resolution of DOE's expected motion to withdraw its license application. On March 3, 2010, DOE filed a motion seeking to withdraw its license application, with prejudice. By order dated March 5, 2010, CAB4 indicated it will not rule on that motion until after it rules on intervention petitions filed by the State of South Carolina, the State of Washington, and Aiken County, SC. Since that order, additional intervention petitions have been filed by the National Association of Regulatory Utility Commissioners and by the Prairie Island Indian Community.

Licensing Review

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] On January 27, 2010, the staff informed CAB4 that it will complete SER Volumes 1 and 3 by no later than August and November 2010, respectively. The staff is continuing with its safety review and SER preparation at this time. [

] staff will discontinue work on any remaining SER volumes once FY 2010 funds are exhausted and inform the Presiding officer in the proceeding of its actions. As of the end of February 2010, DOE had responded to all the staff's more than 600 requests for additional information. At this time, the staff has not identified a need for any additional information from DOE to complete the SER.

Knowledge Capture and Orderly Closure

For close to 30 years, as the United States has considered Yucca Mountain and other sites for deep geologic disposal of spent fuel and high-level waste (HLW), the NRC's HLW program has amassed a vast amount of information about, and experience with, the technical and regulatory issues associated with the potential licensing of a repository. The staff intends to preserve this knowledge as a resource for future use. In the event that the license review is terminated, the staff would document the current status of the license review in a NUREG document to capture much of the Yucca Mountain-specific technical and regulatory knowledge gained by the staff. Also, the staff will need to identify and retain other important technical and regulatory knowledge that could support future changes to the NRC's regulatory framework for HLW and spent fuel disposal. Much of this knowledge has been developed by the NRC staff and the Center for Nuclear Waste Regulatory Analyses (Center). The continued viability of the NRC's HLW Program, including the Center, is critical to maintain the core skills and range of expertise necessary for the NRC to implement future direction in the national program for HLW and spent nuclear fuel disposal. As much as possible, the staff will continue to retain this valuable source of skills and technical insight with fee-based funds and limited use of Nuclear Waste Fund monies.

Adjudicatory Hearing Infrastructure

The Atomic Safety and Licensing Board Panel (Panel) intends to maintain the infrastructure for the adjudicatory hearing associated with the HLW repository licensing proceeding, including the LSN, the Digital Data Management System (DDMS), and the Las Vegas Hearing Facility, until the Agency has completed the adjudicatory process regarding the DOE withdrawal request. If

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there is a final decision terminating the HLW repository licensing proceeding, and the Panel receives Commission direction that no further basis exists for maintaining any infrastructure related to the HLW repository licensing proceeding, the Panel anticipates that it will be able to remove DDMS components from the Las Vegas Hearing Facility and close the facility within 4 to 6 months. (Under the current lease, the Government must give the lessor at least 120 days notice of its intent to vacate.) Assuming adequate fee-based funding, the DDMS would remain functional within the Panel's Rockville, MD, hearing facility for use in the many combined license and other proceedings that the Panel will conduct over the next several years.

Whether the LSN should remain viable as a knowledge management tool once the HLW repository proceeding is terminated is one of the matters currently pending before CAB4. As noted by LSN Administrator Daniel Graser in his December 17, 2009, memorandum to CAB4, the LSN's principal function as the unified search index for the nearly four million documents in the HLW document collections for the various participants will be irrecoverably nullified if the DOE document collection (which constitutes 99 percent of the documentary material available via the LSN) is taken offline and archived. In the event of a non-appealable decision to permit DOE to remove its collection from the LSN and to discontinue the system, the Panel would require approximately 4 months from a final Commission determination to terminate the LSN to complete the decommissioning process.¹

Enclosures:

1. High-Level Waste Budget for Fiscal Year 2010 (Pie Chart)
2. Tentative Completion Dates for Safety Evaluation Report Volumes

¹ Although recent events, including the filing of several additional intervention petitions, suggest an increased level of adjudicatory activity over the coming months relative to the DOE withdrawal motion, the Panel anticipates that the Panel's current FY 2010 HLW funding should be adequate to cover those hearing-related activities. [

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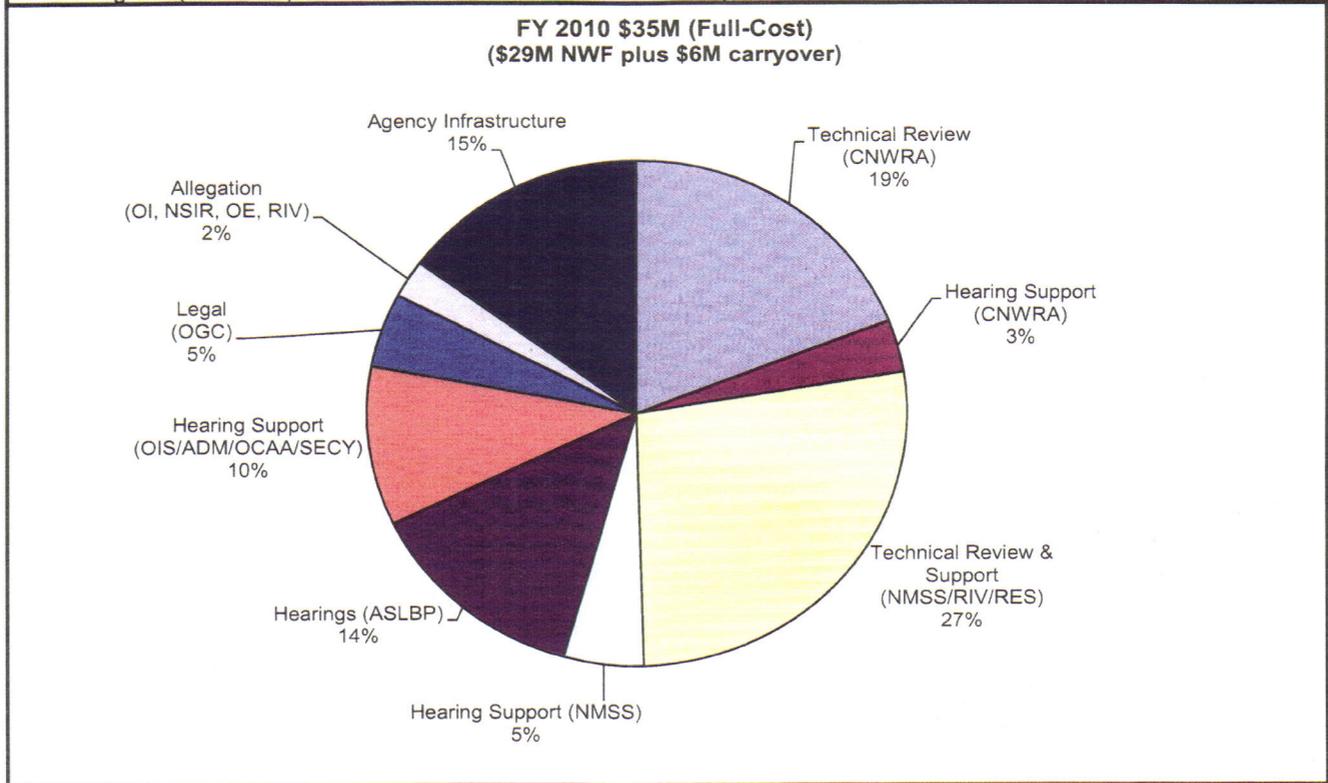
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Allocation of HLW Funding
 FY 2010 \$35M Full-Cost
 (\$29M NWF plus \$6M carryover)

HLW Offices	FY 2010 \$35M Full-Cost (\$29M NWF plus \$6M carryover)	
<i>Reserved Carryover</i>	945	3%
Technical Review (CNWRA)	6,676	19%
Hearing Support (CNWRA)	1,178	3%
Technical Review & Support (NMSS/RIV/RES)	9,506	27%
Hearing Support (NMSS)	1,677	5%
Hearings (ASLBP)	4,732	14%
Hearing Support (OIS/ADM/OCAA/SECY)	3,534	10%
Legal (OGC)	1,662	5%
Allegation (OI, NSIR, OE, RIV)	844	2%
Agency Infrastructure	5,200	15%
Total Program (Full-Cost)	35,009	100%



TENTATIVE COMPLETION DATES FOR SAFETY EVALUATION REPORT VOLUMES
(Milestones to be completed no later than dates shown)

SER Volume Number	Volume 1 General Information	Volume 2* Preclosure	Volume 3* Postclosure	Volume 4* Administrative/ Programmatic	Volume 5* License Specifications
HLWRS Staff completes text and Executive Summary	04/23/2010	09/21/2010	06/14/2010	08/5/2010	09/30/2010
HLWRS Management and OGC Volume Review Complete	06/7/2010	11/3/2010	07/27/2010	09/17/2010	11/15/2010
Resolve Comments and Complete Review by Technical Editor	07/6/2010	12/03/2010	08/24/2010	10/18/2010	12/14/2010
OGC Complete Legal Review	07/20/2010	12/17/2010	09/08/2010	11/01/2010	01/13/2011
NMSS Director Review and Concurrence	07/27/2010	01/04/2011	09/22/2010	11/16/2010	01/27/2011
Final OGC Review Complete with "No Legal Objection"	08/03/2010	01/18/2011	10/06/2010	12/01/2010	02/10/2011
Publication of Final SER Volume	08/31/2010	03/01/2011	11/19/2010	01/14/2011	03/24/2011

*Work on these volumes will be discontinued once FY 2010 funds are exhausted

ENCLOSURE 2