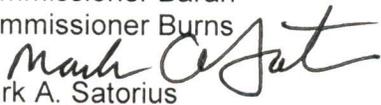




UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

December 24, 2014

MEMORANDUM TO: Chairman Macfarlane  
Commissioner Svinicki  
Commissioner Ostendorff  
Commissioner Baran  
Commissioner Burns

FROM:   
Mark A. Satorius  
Executive Director for Operations

SUBJECT: YUCCA MOUNTAIN PROJECT ACTIVITIES

COMSECY-14-0041  
**REPLY REQUESTED BY:**  
1-12-2015

The purpose of this paper is to respond to Commission direction that the staff submit its assessment of remaining Nuclear Waste Fund (NWF) funds and its proposed plan to complete the environmental impact statement (EIS) supplement and load Licensing Support Network (LSN) documents into the public portion of the agency's Agencywide Documents Access and Management System (ADAMS). The Commission provided this direction in its May 19, 2014, Staff Requirements Memorandum (SRM)-COMSECY-14-0013, "Staff Requirements – COMSECY-14-0013 – Yucca Mountain Project Activities," (ML14139A264).

This paper includes a commitment to inform the Commission of the status of NWF resources after completing the activities described in this paper (assuming the Commission directs the staff to complete these activities).

BACKGROUND:

On November 18, 2013, the Commission issued SRM M131118 (November 18, 2013; ML13322A007) and a Memorandum and Order, which set a course of action for the Yucca Mountain licensing process consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *In re Aiken County*, and with the resources available. Among other things, the Order directed the NRC staff to complete and issue the safety evaluation report (SER) associated with the construction authorization application for a geologic repository at Yucca Mountain; directed that all LSN documents be loaded into a nonpublic library in ADAMS; and requested that the U.S. Department of Energy (DOE) prepare the EIS supplement that the

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NRC staff has determined is needed under the National Environmental Policy Act. SRM M131118 also directed the staff to keep the Commission informed of the status of the activities in the Order and SRM through brief, monthly progress reports. On January 24, 2014, in SRM-SECY-13-0138A/SECY-13-0138 (M140124; ML14024A265), the Commission provided further direction on the use of additional deobligated funds to enable public access to the LSN documents as long as actual expenditures for the Yucca Mountain project activities over the first 3 months of activity were consistent with initial cost estimates.

On April 9, 2014, the staff provided the Commission in COMSECY-14-0013 (ML14085A206) with an update on the development of the SER. The staff also indicated in the COMSECY that the DOE had declined to develop a supplement to its Yucca Mountain repository EIS to address the topics identified in the NRC staff's 2008 adoption determination report. The staff requested Commission approval to develop the EIS supplement instead. In addition, the staff provided an estimate of remaining NWF resources and estimates of the costs to develop an EIS supplement and load existing LSN documents into public ADAMS. In response to the COMSECY, the Commission issued SRM-COMSECY-14-0013, stating that the staff should plan to load LSN documents into public ADAMS and plan to develop the supplement, but that work should not begin until the staff has reassessed NWF funds remaining and the Yucca Mountain SER and Waste Confidence rulemaking are substantively complete.<sup>1</sup> The Commission also stated that, based on staff's assessment, it would then provide direction on the allocation of funding to these tasks.

#### DISCUSSION:

This paper serves three functions concerning Yucca Mountain project activities, listed below:

- Describes the staff's progress in completing the SER and provides an estimate of the NWF resources that are projected to remain after the SER has been completed.
- Describes and requests Commission approval of the staff's proposed path forward concerning: 1) the staff's proposal to develop a supplement to the DOE's repository EIS; and 2) the staff's proposal to undertake certain SER wrap-up activities.
- Describes and requests a Commission decision concerning two options for making existing LSN documents publicly available in ADAMS.

#### *Completing the SER*

To date, no unforeseen technical or process issues have arisen that would affect the January 2015 SER completion date. Volume 3 of the SER was issued on October 16 of this year (ML14290A243) and Volume 4 was issued on December 18, 2014. Volumes 2 and 5 are scheduled to be issued by January 31, 2015. Enclosure 1 provides information on SER-related expenditures as of November 30, 2014.

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<sup>1</sup> The Continued Storage (formerly Waste Confidence) rulemaking was completed in September 2014.

*Developing the EIS Supplement*

As the Commission directed, the staff has developed a plan to prepare the EIS supplement, and this plan is provided in Enclosure 2. The plan encompasses developing technical information for a draft supplement, publishing and distributing the draft supplement for comment, holding public meetings at NRC headquarters and in Nevada, cataloging and responding to public comments, and publishing and distributing a final supplement. In developing the plan, the staff has made the following assumptions:

- The scope of the supplement will be limited to that defined in the staff's 2008 Adoption Determination Report.<sup>2</sup> (ML082420342)
- The primary technical analysis will be drawn from DOE's 2014 update of its technical report (*Analysis of Postclosure Groundwater Impacts for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada*).<sup>3</sup>
- The staff estimates that it can complete the supplement within 12-15 months after receiving Commission direction to proceed.

The resources needed for developing the supplement are provided in Enclosure 1.

*Safety Evaluation Report Wrap-Up Activities*

In this paper, the staff is proposing a new set of activities to be conducted after completion of the SER, in parallel with EIS supplement and LSN activities. This category comprises two major activities:

- Document retention and management, including the archiving of documents used in the preparation of the SER: This activity is necessary to be in compliance with records management requirements, such as the requirements of the National Archives and Records Administration.
- Completion of lessons-learned reports that would address aspects of the licensing process, including the use of guidance and the implementation of NRC regulations for a high-level waste repository: The staff recommends this activity as a sound knowledge management practice in the face of recent NRC organizational changes, staff turnover in the NRC's Yucca Mountain program, and uncertainty concerning future repository activities. Such activities would position the agency well in the event the Yucca Mountain repository adjudication is resumed, or for potential NRC licensing of another geologic repository for high-level waste.

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<sup>2</sup> On December 4, 2014, the State of Nevada sent a letter to the Commission stating that the scope of the EIS supplement should be expanded (ML14339A554).

<sup>3</sup> On October 3, 2014, the DOE submitted this update of its 2009 report (ML14303A393).

The staff estimates that it can complete these two new activities in a 1-2 month period. Enclosure 1 provides a cost estimate for the activities.

#### *Loading Existing LSN Documents into Public ADAMS*

As noted in COMSECY-14-0013, the agency has loaded and indexed the LSN documents of all the parties to the Yucca Mountain adjudication, other than the staff<sup>4</sup>, into a nonpublic library in ADAMS, which has been made available to agency staff. This nonpublic ADAMS LSN library also has an improved search engine, which has provided internal agency users with enhanced search capabilities. In this paper, two options are identified for making LSN documents, including the staff's LSN documents now in ADAMS, available for searching and access in a single library in public ADAMS. One option would make the public ADAMS LSN library available with the existing ADAMS search capabilities, while the other would include the enhanced search engine currently being utilized by internal agency users. Under either option; however, time and resources would be needed for development, testing, deployment, and other system considerations. Enclosure 3 describes the two options and provides a breakdown of the costs and time necessary to implement each option, including the annual costs associated with continuing maintenance of such a public records database. Depending on the option chosen, the staff anticipates it could complete these activities within 5-8 months after receiving Commission direction to proceed.

Because all of the documents provided to the NRC by the parties to the Yucca Mountain adjudication were previously publicly available, there are no plans to perform the standard ADAMS document review to identify and preclude the release of Sensitive Unclassified Non-Safeguards Information, and the current estimate assumes no such review prior to making the existing LSN collection public. DOE confirmed in a letter dated November 18, 2014 (ML14325A832), that all of the LSN documentary material it provided to the NRC, which makes up most of the existing LSN collection, is non-sensitive and can be publicly available.

#### *Assessment of Remaining NWF Funds*

Considering all of the Yucca Mountain project activities that were directed in SRM M131118 (November 18, 2013; ML13322A007) and SRM-14-0013 (May 19, 2014; ML14139A264), the staff's current resource projections indicate that, in the absence of significant expenditures not already identified, the available carryover NWF funding remaining after the SER is completed will be sufficient to develop and issue the EIS supplement, load the LSN document collection into a public library in ADAMS (utilizing either of the proposed options), and conduct wrap-up activities as proposed. Enclosure 1 provides details about NWF expenditures and funds remaining.

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<sup>4</sup> The staff's LSN documents had previously been loaded into ADAMS as part of the LSN.

COMMITMENTS:

The NRC staff will inform the Commission on the status of NWF expenditures after completing the EIS supplement, wrap-up activities, and LSN activities (assuming the Commission directs the staff to complete these tasks).

RECOMMENDATIONS:

The staff recommends that the Commission approve the staff's plan to move forward with remaining Yucca Mountain Project Activities, as follows:

- Develop and issue the EIS supplement as proposed in Enclosure 2.
- Proceed with SER wrap-up activities as proposed in this paper.

The staff also recommends that the Commission choose one of the options described in Enclosure 3 for loading the existing LSN documents into public ADAMS. The staff is not providing a specific recommendation regarding the options, because the staff is just one party in the adjudicatory proceeding and the LSN was designed as a tool to be used by all parties in the adjudication.

Finally, the staff recommends that after the SER is completed, the reports the staff now sends monthly to the Commission and Congress be provided on a quarterly basis.

The staff will also continue to support external litigation, but does not anticipate significant additional external litigation costs. External litigation related to *In re Aiken County* has been completed, with the last issue on attorneys' fees resolved in the United States Court of Appeals for the District of Columbia Circuit's October 23, 2014, decision that denied the petitioners' motion to recover the fees. Previous litigation on the NRC revision of Part 63 remains suspended, pending resumption of the Yucca Mountain adjudication.

RESOURCES:

The resource implications associated with the staff's recommendations are addressed in the enclosures.

COORDINATION:

The Office of the General Counsel has reviewed this package and has no legal objection. The Office of the Chief Financial Officer has reviewed this package and concurs with the financial information.

The Commissioners

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The staff recommends that Enclosure 1 be withheld from public release, because this enclosure contains predecisional budget information. Likewise, the staff recommends that Enclosures 1 and 3 be withheld from public release, because these enclosures contain proprietary and predecisional contract information.

SECY, please track.

Enclosures:

1. Resource Estimates for Yucca Mountain  
Project Activities
2. Project Plan, Yucca Mountain Review  
Activities, Addendum for Environmental  
Impact Statement Supplement
3. Options for Loading and Maintaining  
Licensing Support Network  
Documents in Public ADAMS

cc: SECY  
OGC  
OCA  
OPA  
OCFO